

Exhibit

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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

3
4 YOUNG AMERICA'S FOUNDATION; BINGHAMTON UNIVERSITY
5 COLLEGE REPUBLICANS; AND JON LIZAK, PRESIDENT OF THE
6 COLLEGE REPUBLICANS OF BINGHAMTON UNIVERSITY,
7 Plaintiffs,

8 vs. Civil Action No: 3:20-cv-822 (LEK/ML)

9 HARVEY STENGER, President of SUNY-Binghamton, in his
10 official and individual capacities;
11 BRIAN ROSE, Vice President for Student Affairs of
12 SUNY-Binghamton, in his official and individual
13 capacities; JOHN PELLETIER, Chief of SUNY-Binghamton UPD,
14 in his official and individual capacities; COLLEGE
15 PROGRESSIVES, a student organization of SUNY-Binghamton;
16 PROGRESSIVE LEADERS OF TOMORROW ("PLOT"); STUDENT
17 ASSOCIATION OF BINGHAMTON UNIVERSITY,
18 Defendants.

19
20 DEPOSITION

21 WITNESS: Harvey Stenger

22 DATE: 2/24/23

23 START TIME: 9:00 a.m.

24 END TIME: 3:00 p.m.

25 LOCATION: DoubleTree by Hilton-Binghamton
225 Water Street
Binghamton, New York 13901

REPORTER: Delores Hauber

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17 Also Present:

18 KEVIN HAYDEN, ESQ., Binghamton University Chief
19 Campus Counsel
20
21
22
23
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FEDERAL STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties that the presence of the Referee be waived;

IT IS FURTHER STIPULATED AND AGREED that the witness shall read and sign the minutes of the transcript within 30 days upon receipt, and that the filing of the transcript be waived;

IT IS FURTHER STIPULATED AND AGREED that all objections except as to form are reserved until the time of trial;

IT IS FURTHER STIPULATED AND AGREED that this Deposition may be utilized for all purposes as provided by the Federal Rules of Civil Procedure;

AND FURTHER STIPULATED AND AGREED that all rights provided to all parties by the Federal Rules of Civil Procedure shall not be deemed waived and the appropriate sections of the Federal Rules of Civil Procedure shall be controlling with respect thereto.

1 H A R V E Y S T E N G E R,
2 having been called as a witness, having been duly sworn
3 testified as follows:

4 MR. HRUSKA: Andrew Hruska for plaintiffs,
5 Young America's Foundation and College
6 Republicans of Binghamton University.

7 MR. MOORE: John Moore for the defendants
8 Stenger, Rose and Pelletier from the New York
9 State Attorney General's Office.

10 MR. HAYDEN: Kevin Hayden for Binghamton
11 University chief campus counsel.

12 MS. KURLUK: Amanda Kurluk from the
13 Attorney General's Office also on behalf of the
14 defendants.

15 MR. SAIITA: Tom Saitta here representing
16 the Student Association.

17 EXAMINATION BY

18 MR. HRUSKA:

19 Q So, President Stenger, is that how I should
20 refer to you, sir?

21 A You can refer to me that. That's fine.
22 Whatever is comfortable for you.

23 Q Whatever you would prefer.

24 A I'm good with anything.

25 Q I'm going to cover a few background points

1 before we start, the ground rules for this deposition.
2 First of all do you understand that you are being
3 deposed in the case of Young America's Foundation versus
4 Harvey Stenger and others?

5 A Yes.

6 Q Have you ever been deposed before?

7 A I don't think so.

8 Q Could you state your full name and address for
9 the record?

10 A Harvey Glen Stenger, Junior, 946 Vestal Avenue,
11 Binghamton, New York 13903.

12 Q Do you understand that you have taken an oath
13 to tell the truth?

14 A Yes.

15 Q Is there anything that would stop you from
16 being able to give true and accurate testimony today?

17 A No.

18 Q Let me go over some grounds rules about how
19 this deposition will be conducted. I'll ask questions.
20 You'll give the answers. Do you understand how that
21 will work?

22 A Yes.

23 Q And if I ask a question that you don't
24 understand, please tell me that you don't understand it.
25 As I'm sure Mr. Moore will tell you it's not helpful if

1 we miscommunicate and you give an answer to a question
2 that you don't understand; is that understood?

3 A Yes.

4 Q The court reporter is taking down everything we
5 say and so it's important that we speak slowly and
6 clearly enough so that we can have an accurate record.
7 Do you understand that?

8 A Yes.

9 Q Wait for me to finish my question and I'll wait
10 for you to finish your answer and that will help us
11 develop a clear record, understood?

12 A Yes.

13 Q If you need to take a break at any time, just
14 let us know and we can take a break. There is no
15 compulsion to stay on the record. With the one
16 exception that if there is a question pending, I would
17 strongly prefer you finish your answer so we can have a
18 clear record before you take a break, understood?

19 A Yes.

20 Q In advance of today's deposition did you
21 refresh your recollection of the events of November 2019
22 which are the centerpiece of this lawsuit?

23 A Could you repeat that?

24 Q In advance of today's deposition did you
25 refresh your recollection of the events of November 2019

1 which are at the center of this lawsuit?

2 A The entire month of November 2019?

3 Q The events that are at the center of it. There
4 are primarily two events. There was an incident in
5 which there were students who were advertising a speech
6 by Dr. Laffer on November 14th, 2019 were harassed by
7 other students and perhaps others. And there was a
8 subsequent event on November 18th, 2019 in which Dr.
9 Laffer attempted to address a preplanned assembly and he
10 was shouted down by students. Do you recall those
11 events?

12 MR. MOORE: Objection to the form of the
13 question, the characterization of the events.
14 You can answer.

15 Q Do you recall those events?

16 A That was not the question you had asked. You
17 asked if I had prepared.

18 Q I asked if you refreshed your recollection of
19 those events and you asked me what events so I'm telling
20 you those are the events that are the center of this
21 lawsuit. Have you refreshed your recollection about
22 those events?

23 A Yes.

24 Q It will help by way of reference if we refer to
25 the first event that I mentioned as the tabling event

1 which I will stipulate to you it was November 14th,
2 2019. And the second event as the Laffer event which
3 was November 18th, 2019. Do you understand that?

4 A Yes.

5 Q So you'll understand what I mean when I refer
6 to the tabling event and the Laffer event respectively?

7 A Yes.

8 Q So did you refresh your recollection of the
9 tabling event and the Laffer event before this
10 deposition?

11 A Yes.

12 Q Did you review any videos of those events?

13 MR. MOORE: I'm going to object to the
14 extent that you're asking him to describe any
15 meetings with counsel.

16 Q I don't want to, nothing I say in this
17 deposition should imply nor should you infer that I want
18 you to say anything about your discussions with Mr.
19 Moore or any of your other counsel. I'm just asking
20 whether in the process of preparing for today's meeting,
21 which is in 2023, you reviewed any video of the tabling
22 event or the Laffer which occurred in 2019?

23 A I have not reviewed them.

24 Q All right. Why don't we back up a bit and tell
25 us about your educational and professional background.

1 Where did you go to school, where have you worked?

2 A Where would you like to start?

3 Q Why don't you start with college.

4 A Okay. I was an undergraduate at Cornell,
5 graduated in 1979. Graduate student at MIT, graduated
6 1984.

7 Q In what subjects?

8 A Chemical engineering.

9 Q And then what is your professional background?

10 A Chemical engineer.

11 Q And what jobs have you held?

12 A I was a faculty member. Professor at Lehigh
13 University. I was an administrator, associate dean,
14 center director, department chair and dean of the
15 college of engineering and applied sciences at Lehigh.
16 I then was a faculty member again at Lehigh University
17 for a while. And then I went to the University of
18 Buffalo where I was the dean of the school of
19 engineering and applied sciences.

20 Q Let me stop you there for a moment. When did
21 you move over to the University of Buffalo?

22 A 2006, August 2006.

23 Q And is that, is that SUNY Buffalo or is that
24 the private university?

25 A That's SUNY Buffalo.

1 Q So part of the same State University of New
2 York system which you are now also employed?

3 A Yes.

4 Q When did that employment start? 2006 did you
5 say?

6 A August 2006.

7 Q Okay. Sorry for the interruption. Please
8 continue from there.

9 A I left in January of 2012 to become the
10 president at Binghamton University. I served a short
11 term, about eight months, as the interim provost at the
12 University of Buffalo before I left.

13 Q Other than the provost position at Buffalo what
14 were your other administrative as opposed to teaching
15 responsibilities at the University of Buffalo?

16 A I was the dean of the school of engineering and
17 applied sciences.

18 Q And in that role what responsibilities did you
19 have for the administration as opposed to education of
20 the school of applied sciences?

21 MR. MOORE: Objection to form. You can
22 answer if you understand.

23 Q Is that clear enough? I'm not trying to ask
24 you about chemical engineering. I'm asking about what
25 your responsibilities were for the administrating of the

1 school.

2 A Well, the dean of the school manages the
3 faculty and staff. Department chairs report to the
4 dean. The dean manages the finances of the school and
5 helps with fundraising. Dean work.

6 Q Did dean work at the University of Buffalo
7 during the period you were there did that include
8 discipline of students?

9 A For academic dishonesty, yes.

10 Q How about for any other reason other than
11 academic dishonesty?

12 A No.

13 Q When you moved into your position, as I think I
14 have it correct, provost at University of Buffalo for a
15 short period of time?

16 A Right.

17 Q How did your responsibilities change?

18 A I had the dean's report to me. And the
19 management of the, all of the deans' budgets was my
20 responsibility.

21 Q And did you assume any responsibility for
22 discipline outside of the category of academic
23 dishonesty at that point?

24 A No.

25 Q During the time you were at University of

1 Buffalo did you receive any training in adherence to
2 First Amendment protections as required by government
3 officials?

4 MR. MOORE: Objection to form. You can
5 answer.

6 A I don't remember.

7 Q And you left University of Buffalo in 2012 I
8 think you testified to, correct?

9 A Uh huh.

10 Q And did you immediately move into your current
11 position --

12 A Uh huh.

13 Q -- as president of Binghamton University,
14 correct?

15 MR. MOORE: Harvey, you can't say uh huh.

16 The stenographer will need to take verbal
17 answers, so it's got to be yes or no.

18 Q Am I correct you moved directly into your
19 position as president of Binghamton University?

20 A Yes.

21 Q And describe please your responsibilities as
22 president of Binghamton University, have they remained
23 the same throughout or have they changed over time?

24 A They have remained the same.

25 Q And if you could summarize, I realize there's a

1 broad array of responsibilities, but can you summarize
2 your responsibilities as president?

3 A I managed the overall well-being of the
4 university.

5 Q And who reports to you in your role as
6 president?

7 A Vice presidents and directors, executive
8 directors.

9 Q Roughly how many vice presidents are there and
10 how many executive directors? If that has changed over
11 time, tell us that as well.

12 A I have to write them down.

13 MR. MOORE: Don't take any notes. Just
14 best recollection. There's no need to.

15 A I don't even know how to count sometimes.

16 MR. MOORE: He's just looking for your best
17 recollection.

18 A There's six vice presidents. Maybe there's six
19 I think.

20 Q Are there others who are executive directors?

21 A Yes.

22 Q How many executive directors are there?

23 A There's three of those, approximately three.

24 Q So you supervise directly roughly nine reports
25 so to speak; is that correct? If you understand what I

1 mean.

2 A No. It's more than that.

3 Q More than that. Well, tell us about your other
4 direct reports then.

5 A Campus auditor. Campus counsel. Faculty
6 advisor to the president. Chief of staff.
7 Administrative assistant to the president. That's it.

8 Q And you don't need to go through them, but have
9 those individuals changed over time during the period
10 while you've been president, are there different people
11 in those roles or has it been the same consistently?

12 A They have changed. Some have changed.

13 Q What as president is your relationship with the
14 state university system as a whole? How do you interact
15 with the State University of New York?

16 A I have meetings with other presidents and the
17 chancellor maybe twice a year, three times a year.
18 That's about it.

19 Q Do you have a reporting relationship with the
20 chancellor? Do you report to her?

21 A Yes, to him. Yes, I report to the chancellor.

22 Q And what is his name?

23 A John King.

24 Q Has that changed recently?

25 A Yes.

1 Q Was the former chancellor Kristina Johnson; is
2 that right?

3 A No.

4 Q Who was the former chancellor?

5 A Debra Stanley.

6 Q And when was that change between Miss Stanley
7 and the current Mr. King?

8 A About a month ago. Maybe two months ago.

9 Q So what is the nature of that reporting
10 relationship? Are you a subject to the direction of the
11 chancellor; is that a fair characterization?

12 A There's been five chancellors since I've been
13 president and they all work differently with the
14 presidents so I'm not, I'm not sure how I would work
15 with John.

16 Q But as a formal matter are you responsible to
17 take the instructions you receive from the chancellor;
18 is that a fair?

19 A If the chancellor gave me instructions, I would
20 follow them.

21 Q As a matter of your occupational requirement or
22 as a matter of prudence?

23 A Prudence.

24 Q Because you thought it was a good idea?

25 A Thought it was a good idea.

1 Q But are you obligated as part of the employment
2 relationship to follow instructions that come from the
3 chancellor?

4 A No. My contract does not say that I'm
5 obligated to follow him.

6 Q That's the question I want to answer. You have
7 an independent scope of authority outside of the
8 chancellor's direction; is that correct?

9 A Yes.

10 Q So while you might respect a view that you
11 receive from your consultation with the chancellor,
12 ultimately the decisions that you make in the scope of
13 your employment are yours; is that correct?

14 MR. MOORE: Objection to form. You can
15 answer.

16 A Yes.

17 Q If you would like me to rephrase any question
18 that is not clear, please tell me. I'm not trying to
19 trick or trap. I'm just trying to understand your view
20 on this.

21 A Okay.

22 Q When you ascended to the presidency of
23 Binghamton University and since then have you received
24 any training in First Amendment issues?

25 A No.

1 Q Have you received any training in the
2 management of crowd events?

3 A No.

4 Q Have you received any training in event
5 planning?

6 A Training?

7 Q Training, yes.

8 A As a formal certificate of completing a module
9 or some in person or remote class or course of study,
10 no.

11 Q Have you received any informal training on that
12 subject?

13 A Training is still the word, no.

14 Q So you were defining training stipulatively as
15 a formal process that results in the award of a
16 certificate. I'm trying to use the word in a different
17 sense so I'm going to change words. Have you received
18 any instruction informally as to how to deal with First
19 Amendment issues other than what you received from legal
20 counsel?

21 A Instruction?

22 Q Instruction.

23 A No instruction.

24 Q How about education on that topic?

25 A Not education.

1 Q So it's been a learning on the job experience
2 for you; is that correct?

3 MR. MOORE: Objection to form. You can
4 answer.

5 A I think I've received advice.

6 Q Other than legal advice, what advice have you
7 received on the topic of handling First Amendment issues
8 at Binghamton University?

9 A Other than, I didn't say legal advice. I said
10 advice.

11 Q I wanted to specifically exclude legal advice
12 because I'm not trying to intrude on your
13 attorney-client privilege. So other than that if you
14 received any at all, I don't presuppose that you did,
15 what advice have you received on First Amendment issues?

16 A During conversations with other university
17 presidents outside of the State of University of New
18 York. People who run organizations that oversee some of
19 the activities of public universities and the
20 association of public and land grant universities. So
21 there are some opportunities to talk to colleagues and
22 get their advice on how to, how to manage First
23 Amendment issues.

24 Q Has any of that advice been more formalized,
25 even if short of the formal certificated training that

1 you testified about a moment ago, has it resulted in any
2 written communication?

3 A No.

4 Q What training have you received with respect to
5 the university discipline of students in your role as
6 president of Binghamton University?

7 A No training.

8 Q None whatsoever?

9 A I'm not going to, I don't think the word
10 training is appropriate.

11 Q Well, how did you learn about the university
12 disciplinary process in your role as president of
13 Binghamton University?

14 A Through reading the student code of conduct.
15 Asking questions of the vice president of student
16 affairs.

17 Q Any other sources?

18 A Those were the major sources.

19 Q And what as you understand it is your role in
20 the university disciplinary process for students?

21 A I do not have a role.

22 Q Do you have an advisory role?

23 A No.

24 Q Are you called upon to give advice to those who
25 do have a role in that process?

1 A No.

2 Q Do you educate yourself as to the evolving
3 disciplinary issues that exist at the university?

4 A Yes.

5 Q How do you do that?

6 A Through conversations with the vice president
7 of student affairs.

8 Q And who is the vice president of student
9 affairs?

10 A Brian Rose.

11 Q Has he been in that role for the entire time
12 you've been president?

13 A Yes.

14 Q As you understand it is Mr. Rose the final
15 authority of student disciplinary issue at the
16 university?

17 A Yes.

18 Q And he reports directly to you, correct?

19 A Correct.

20 Q What do you -- strike that. Do you understand
21 how the student disciplinary process works in
22 Binghamton?

23 A Yes.

24 Q And can you lead us through that please? How
25 does the process work?

1 A A complaint is filed with the office of student
2 conduct. The director of the office of student conduct
3 then manages that complaint.

4 Q And who is in charge of the office of student
5 conduct if you know?

6 A Currently?

7 Q Currently, sure.

8 A Amy Zieziula.

9 Q And was Miss Zieziula also in charge of that
10 office in November 2019?

11 A No.

12 Q Who was in charge at that point?

13 A I don't remember.

14 Q And to whom does the officer in charge of the
15 office of student conduct report directly?

16 A I'm not certain.

17 Q Does that chain of reporting ultimately go up
18 to Brian Rose, that's your testimony, correct?

19 A Yes.

20 Q And in the process of managing a complaint what
21 processes are applied in order to reach the resolution
22 of that complaint process?

23 A I've never been formally involved in it.

24 Q Despite what you've testified is a lack of a
25 formal rule, have you nonetheless advised on appropriate

1 disciplinary processes at Binghamton University?

2 A I don't remember.

3 Q Do you recall instances in which you've
4 consulted with Mr. Rose on disciplinary issues?

5 A Yes.

6 Q In the course of that consultation have you
7 offered Mr. Rose your advice about how to proceed on
8 student disciplinary issues?

9 A I've made suggestions, but I wouldn't call it
10 advice.

11 Q Do you recall any instances in which Mr. Rose
12 rejected your suggestions and acted contrary to the
13 course that you had suggested?

14 A I don't remember any specific cases where I
15 advised him to do anything with regard to a student
16 conduct case. I don't remember any of the cases.

17 Q I'm sorry. I just want to make sure I have
18 your testimony correct. You don't recall any instance
19 in which you gave him any suggestion about a student
20 conduct case, have I got that correct?

21 A I may have, but I'm not sure.

22 Q But you don't have a concrete recollection of
23 any specific cases; is that your testimony?

24 A Correct.

25 Q You're aware of a component of the university

1 called the university police department, correct?

2 A Yes.

3 Q And that department is subject to the direction
4 of Binghamton University, correct?

5 A Yes.

6 MR. MOORE: Objection to form. You can
7 answer.

8 Q How does that direction function as you
9 understand it?

10 A Direction?

11 Q Well, explain as you understand it the
12 relationship between the university police department
13 and the leadership of Binghamton University.

14 A There's a chief of police and currently that
15 chief of police reports to the vice president of
16 operations.

17 Q In 2019 was the vice president of operations
18 Mr. Faughnan, Tim Faughnan?

19 A No.

20 Q Who was it then?

21 A JoAnn Navarro.

22 Q What was Mr. Faughnan's role in 2019?

23 A Well, in 2019 there was an associate vice
24 president, Mr. Faughnan. The chief of police reported
25 to him then. He is retired and now the chief of police

1 reports directly to the vice president of operations
2 because we did not replace Mr. Faughnan.

3 Q Understood. And in November 2019 the chief of
4 police was Mr. Pelletier, correct?

5 A Correct.

6 Q What is your responsibility for oversight of
7 the university police department?

8 MR. MOORE: Objection to form. You can
9 answer.

10 A I allow the vice president of operations to
11 manage that department.

12 Q And does the management of the university
13 police department include making decisions about the
14 handling of potential criminal matters?

15 A Yes.

16 Q And does the university police department have
17 the authority to charge individuals with New York State
18 crimes?

19 A Yes.

20 Q Does it have the authority to make arrests?

21 A Yes.

22 Q And does the administration have the authority
23 to ultimately make decisions about what arrests the
24 university police department makes?

25 A The university?

1 Q The university administration by which I mean
2 the vice president and president, the relevant vice
3 president and president.

4 MR. MOORE: Objection to form. Do you
5 understand the question?

6 A The question seems to be can the police
7 department arrest somebody without any advice from the
8 administration, yes, they can.

9 Q Let me rephrase because I think that we have
10 miscommunicated. The question is whether the
11 administration -- let me be more specific -- whether the
12 director of administration; is that the correct title?

13 MR. MOORE: Director of operations.

14 Q Director of operations. Can the director of
15 operations instruct the police to make an arrest?

16 A Vice president of operations. I believe that
17 the university police has to follow police protocol to
18 determine when an arrest is made.

19 Q Let me repeat the question. Is the vice
20 president of operations empowered under the rules
21 governing Binghamton University to instruct the police
22 to make an arrest if that arrest is within police
23 protocols?

24 MR. MOORE: Instruct?

25 Q Yes, instruct.

1 A I don't know.

2 Q Who would know?

3 A I don't know.

4 Q Would the vice president of operations know the
5 answer to that question?

6 A You'd have to ask her.

7 Q But she is somebody who reports to you,
8 correct?

9 A Yes.

10 Q Do you know if the vice president of operations
11 can instruct the university police department not to
12 make an arrest in a circumstance in which the university
13 police intends to make an arrest?

14 A I don't know.

15 Q Do you recall the issue of whether or not to
16 make an arrest based on student conduct came to your
17 attention in your role as president of the university?

18 A Student conduct?

19 Q Student conduct, yes.

20 A We don't arrest for student conduct charges.

21 Q I'm using the term in its normal layman sense
22 of conduct by a student. Are you aware of any
23 circumstance in which you as president of the university
24 are asked to advise on whether the university police
25 department should make an arrest for conduct by

1 students?

2 MR. MOORE: Are you talking about criminal
3 arrests, not student conduct charges?

4 MR. HRUSKA: There is only one kind of
5 arrest, Mr. Moore.

6 MR. MOORE: But there is also, you're using
7 the word student conduct.

8 Q I'll use a different word. For bad things that
9 students have done.

10 MR. MOORE: Objection to form.

11 A It's a pretty poorly phrased question. Bad
12 things?

13 Q That's usually why people are arrested, Mr.
14 Stenger, for doing bad things. Do you recall any
15 circumstance in which the university administration,
16 specifically the vice president of operations, was
17 called upon to decide whether or not the university
18 police should make an arrest for bad things that
19 students have done?

20 A No.

21 Q Let me switch topics. Are you familiar with
22 the New York Code of Rules and Regulations governing the
23 State University of New York?

24 A Not much.

25 Q But you're aware that such a document exists,

1 correct?

2 A Yes.

3 Q And you're aware that the significance of that
4 document as it comprises the formal regulations of the
5 state govern the university of which you're president,
6 correct?

7 MR. MOORE: Objection to form. If you
8 know.

9 A I don't know.

10 Q So your testimony is you're not aware of the
11 relevance of the New York State Code of Rules and
12 Regulations governing SUNY?

13 A I know it exists.

14 Q What is your relationship with that body of
15 law?

16 A I know that it exists.

17 Q Are you aware of the content of it?

18 A No, not much.

19 Q Has the content of that body of law been the
20 subject of discussion among university presidents within
21 the State University of New York system in your
22 recollection?

23 A No.

24 MR. MOORE: In his experience?

25 A Not with me involved.

1 MR. HRUSKA: Let me start with our exhibits
2 then. I'll draw your attention to, it's actually
3 toward the back of the binder. Referring to tab
4 25. I don't think it has a sticker yet so I'll
5 ask.

6 MR. MOORE: I believe this was previously
7 marked in Joe's deposition. I don't know how you
8 want to handle that. I don't have the number.

9 MR. HRUSKA: I don't have the number off
10 the top of my head. I don't want to repeat
11 numbers. Let me give it a provisional number now
12 and go back and fix it.

13 MS. KURLUK: It was, I have it marked as
14 Exhibit 9 for Brian Rose's deposition.

15 MR. HRUSKA: So we'll call it BR-9 then.

16 Q So, President Stenger, if you look at this page
17 this is a printout from the New York Code of Rules and
18 Regulations. It is the version that was in place in
19 2019.

20 MR. SAITTA: Excuse me. Which document are
21 we looking at?

22 MR. HRUSKA: We are looking at, it was
23 Brian Rose's Exhibit 9. It is a printout of New
24 York Code of Rules and Regulations.

25 MR. SAITTA: Okay. Do you know what tab it

1 is?

2 MR. MOORE: 25.

3 MR. HRUSKA: It's 25 of today's. I'm
4 sorry, is that Tom? I can't see.

5 MR. SAITTA: Yes. My camera isn't working.
6 On a break I'm going to try to reenter and come
7 back in, but I can still hear you.

8 MR. HRUSKA: No worries. I just wanted to
9 make sure you have the right exhibit in front of
10 you.

11 MR. SAITTA: Yep. I've got tab 25.

12 Thanks.

13 Q President Stenger, you'll see that this
14 provision is a list of prohibited conduct Section 535.3
15 of 8 Code of Rules and Regulations and it applies to the
16 State, Chapter 5 of the State University of New York.
17 And it states that, and I'm going to skip a section just
18 so I'm reading the relevant parts, but if you would like
19 to read further please take your time. At the very top
20 it states "no person, either singly or in concert with
21 others shall:" And then dropping down to Section(i)
22 "deliberately disrupt or prevent the peaceful and
23 orderly conduct of classes, lectures and meetings or
24 deliberately interfere with the freedom of any person to
25 express his views including invited speakers." Were you

1 familiar with that provision of law before the tabling
2 event and the Laffer event in 2019?

3 A No.

4 Q Have you since had occasion to learn of that
5 provision other than through a conversation with counsel
6 before sitting here today for this deposition?

7 A No.

8 Q You're aware as we've already discussed and as
9 you've testified that the University of Buffalo is part
10 of the State University of New York system, correct?

11 A Yes.

12 Q As part of the same State University of New
13 York system in which you are now an employee and
14 president of Binghamton University, correct?

15 A Yes.

16 Q Are you aware that in 2017 the State University
17 of New York entered into a stipulation in a lawsuit
18 involving First Amendment issues with respect to conduct
19 at the University of Buffalo?

20 MR. MOORE: Objection to form. You can
21 answer.

22 A No.

23 Q Well, I would like you to please turn to
24 document 26 in your binder.

25 MR. MOORE: So this was also marked the

1 other day.

2 MS. KURYLUK: It was previously marked as
3 BR-10.

4 MR. HRUSKA: This is Exhibit BR-10.

5 MR. SAITTA: What tab number is that?

6 MR. HRUSKA: Tab Number 26.

7 MR. SAITTA: Thank you.

8 Q And this is a document, it is a court document
9 from the US District Court for the Western District of
10 New York in the case of Center for Bio-Ethical Reform
11 against Dennis R. Black, et al. And the title of it is
12 Stipulation of Settlement and Discontinuance Pursuant to
13 Rule 41(A). So, President Stenger, obviously feel free
14 to read through this to whatever extent you wish, but
15 what I would like you to do is draw your attention to
16 the provision on the second page of the document. This
17 is a document which is the instrument that was used to
18 settle a lawsuit on First Amendment issues. You'll see
19 that on the second page, beginning with the third
20 paragraph it says "now, therefore, it is hereby
21 stipulated and agreed." And then jumping down, if you
22 need more time just please tell me.

23 MR. MOORE: You're referring to the
24 paragraph that says "now, therefore, it is hereby
25 stipulated and agreed, by and between the

1 undersigned attorneys of record for all of the
2 parties in the above-entitled action as follows"?

3 MR. HRUSKA: I'm getting there, but I see
4 President Stenger wants to read the document and
5 I want to let him do that and direct his
6 attention when he has done so.

7 Q I would like to direct your attention to the
8 second page of the document where it says in the
9 beginning of the third paragraph "now, therefore, it is
10 hereby stipulated and agreed, by and between the
11 undersigned attorneys of record for all of the parties
12 in the above-entitled action as follows." And then
13 jumping down to the paragraph number two, "that the
14 State University of New York agrees that it will not
15 engage in" and there's a reference to the parties
16 involved in the specific lawsuit. "And that it will
17 take all reasonable measures to enforce these policies
18 against deliberately disrupting and preventing the
19 freedom of any person to express his or her views." Do
20 you see the, President Stenger?

21 A Uh huh.

22 Q Are you familiar with this document?

23 A No.

24 Q Are you familiar with the lawsuit that this
25 document resolved?

1 A No.

2 Q Had you been instructed at any point before the
3 Laffer event that the State of University of New York
4 had made a legally binding commitment to take all
5 reasonable measures to enforce its policies against
6 deliberately disrupting or preventing the freedom of any
7 person to express his or her views?

8 MR. MOORE: Objection. I'm just objecting
9 on the record. You can answer.

10 A No.

11 Q You testified earlier that you consult with
12 other presidents in the State University of New York
13 system from time to time; is that correct?

14 A I did not say that.

15 Q You testified that you have discussions with
16 other presidents in the State University of New York
17 system from time to time; is that correct?

18 A That is correct that I have had discussions
19 with other presidents in the system. I'm not sure if I
20 actually said that before, but I'll say it now.

21 Q Well, we can go back and read your testimony if
22 there is any uncertainty, but that's my recollection of
23 the substance of your testimony. But it is correct you
24 have from time to time discussions with other presidents
25 in the State University of New York system, correct?

1 A Yes.

2 MR. MOORE: Asked and answered.

3 Q Have you discussed the subject of the Laffer
4 event with the president of the University of Buffalo?

5 A No.

6 Q Have you discussed the issue of the maintenance
7 of First Amendment rights by the State University of New
8 York with the president of the University of Buffalo?

9 A No.

10 Q All right. Let's go back. I'm going to go,
11 I'm going to try to go as closely to chronological
12 sequence as I can because I think it aids in
13 understanding. It's possible that I will go slightly
14 out of sequence. And if I ask you a question that
15 appears to be out of sequence, then please alert me
16 because I'm trying to walk through these events as
17 closely as I can to the way in which they occurred and
18 in which the people in them experienced them,
19 understood?

20 A Yes.

21 Q Beginning before the Laffer event, before the
22 tabling event in 2019 what was your understanding of
23 your responsibility as the president of Binghamton
24 University to defend the First Amendment rights of
25 students at the university?

1 MR. MOORE: Objection to form. If you
2 understand the question, you can answer.

3 A I think I was aware of it.

4 Q What was your understanding of it though? How
5 did your responsibility translate into policy from your
6 perspective?

7 A I don't think, I don't think it did.

8 Q So your testimony is that -- let me back up.
9 So you're testimony is that you acknowledge that you
10 understood that you have a responsibility to defend the
11 First Amendment rights of students at Binghamton
12 University, correct?

13 A Yes.

14 Q In what form did that responsibility take in
15 terms of the policy that you understood you were
16 obligated to exercise as the president of Binghamton
17 University?

18 MR. MOORE: Objection to form.

19 A I don't understand the question.

20 MR. MOORE: Are you asking if there was a
21 policy?

22 MR. HRUSKA: I'm asking him what his policy
23 was.

24 Q You have testified that you had an obligation
25 and the question is designed to elicit from you how that

1 obligation manifests itself in terms of action.

2 A I don't have policies. The university has
3 policies.

4 Q What was the university policy as you
5 understood it at the time?

6 A To protect the First Amendment.

7 Q And what actions did you understand were
8 necessary in order to enforce that policy?

9 MR. MOORE: Objection to form.

10 A To enforce the policy.

11 MR. MOORE: Are you asking about particular
12 situations or in a general?

13 MR. HRUSKA: I want to understand what the
14 policy was.

15 Q You have testified that you had this obligation
16 and I want you to put flesh on the bone and make the
17 record clear as to what actions you were obligated to
18 take in order to protect First Amendment rights.

19 A And I said I am obligated to protect First
20 Amendment rights.

21 Q What about situations in which you perceive
22 there might be some threat of harm to students, in that
23 situation what actions did you understand you were
24 required to take in order to balance the threat of harm
25 against the First Amendment considerations?

1 A I don't understand the question.

2 MR. MOORE: Yeah. I'm going to object to
3 the form of the question.

4 Q Let's walk through it in concrete then. So you
5 recall that we defined the tabling event for the
6 purposes of this deposition as the incident that
7 occurred on November 14th, 2019; is that correct?

8 A Yes.

9 Q So you'll understand what I mean when I say the
10 tabling event?

11 A Yes.

12 Q When did you first become aware of the tabling
13 event?

14 A I heard it from my window.

15 Q You actually heard the noise that was created
16 during the event; is that your testimony?

17 A Yes.

18 Q And what did you do when you heard that noise?

19 A I looked out the window.

20 Q And what did you see?

21 A I could see a partial view of the tabling area.

22 Q What was visible to you?

23 A A significant number of people.

24 Q Roughly how far away from you was that crowd?

25 A Probably eight stories in height and maybe 300

1 yards in distance.

2 Q So not close enough to discern individual faces
3 for instance, correct?

4 A Correct.

5 Q Were you able to however despite the distance
6 estimate the numbers of people gathered?

7 A No.

8 Q Were you able to discern whether there was a
9 police presence on the site?

10 A No.

11 Q So beyond seeing a large group of people
12 gathered, you weren't close enough to see any detail; is
13 that correct?

14 A Correct.

15 Q What did you do then after you had identified
16 that there was a crowd and that they were making a noise
17 that you could hear from your office?

18 A I don't remember.

19 Q Do you recall taking any action based on that
20 observation?

21 MR. MOORE: Asked and answered. You can
22 answer.

23 A I don't remember.

24 Q Do you recall speaking with anybody at that
25 moment about the events that you were seeing from a

1 distance out of your window?

2 A I don't remember.

3 Q Was there anybody else with you in your office
4 at the time?

5 A I don't remember.

6 Q What is the next thing you remember about the
7 tabling event?

8 A That it occurred.

9 Q On November 15th you made a statement about the
10 event. Do you recall doing that, making a public
11 statement about the event the next day?

12 A In what form?

13 MR. HRUSKA: Well, why don't we just go to
14 it. If we turn to tab one in the binder. We
15 will label that HS-1 unless you tell me it's
16 already labeled.

17 (EXHIBIT HS-1 WAS MARKED FOR
18 IDENTIFICATION.)

19 MR. MOORE: I'm not aware of it having been
20 labeled. It might have been referenced in
21 conjunction with the complaint, but not
22 individually marked.

23 MR. HRUSKA: Take a moment to read that.

24 MR. SAITTA: What tab number is that?

25 MR. HRUSKA: Tab 1.

1 MR. MOORE: Can we take a quick bathroom
2 break?

3 MR. HRUSKA: Fine. Any time. Let's go off
4 the record.

5 (RECESS TAKEN.)

6 Q President Stenger, have you had a chance to
7 take a look at the document which has been labeled HS-1,
8 a message from President Stenger, November 15th, 2019?

9 A Yes.

10 Q Is that a statement that you made on November
11 15th, 2019?

12 A Define made. Could you define the word made?

13 Q Did you make the statement? Is that your
14 statement?

15 A Make.

16 Q Did you adopt this statement as your own?

17 A Yes.

18 Q Did you draft the statement?

19 A No.

20 Q Do you know who did?

21 A I know approximately who did.

22 Q Who approximately did?

23 A Office of communications.

24 Q What individuals if you know?

25 A Greg Delviscio.

1 Q Anybody else?

2 A Probably Brian Rose.

3 Q Anybody else?

4 A Could be, but I don't know.

5 MR. MOORE: When you say probably, are you
6 guessing?

7 A Yes.

8 Q Don't guess. If you know, testify. If you
9 don't know, just say you don't know.

10 A Then I don't know.

11 Q Before you adopted this statement who educated
12 you about the substance of the statement?

13 A I read it.

14 Q Did you receive information from anybody else
15 about the substance of the statement?

16 A No.

17 Q What were your sources of information that
18 supported the substance of the statement?

19 MR. MOORE: Objection to form.

20 A I don't remember.

21 Q Let's take a look at the statement. The
22 statement begins by describing a "contentious gathering"
23 from the day before; is that correct?

24 A That's what it says.

25 Q And so you are referring here to what we for

1 the purposes of the deposition called the tabling event,
2 correct?

3 A Yes.

4 Q You state that the "police response was
5 appropriate," do you see that? That's the second
6 sentence in the first paragraph.

7 A Third sentence. Second sentence, yes.

8 Q Third sentence. Sorry. You're correct.
9 "Police response was appropriate and important to make
10 sure that every student involved in this matter was safe
11 and remained safe."

12 A Uh huh.

13 MR. MOORE: Got to be verbal, yes?

14 A I don't think it was a question.

15 Q It was a question. I want to make sure that
16 you affirm that I had correctly read the statement.

17 A You correctly read the statement.

18 Q Yes, that's the question. Because lawyers
19 often do that to make sure that both the witness and
20 lawyer are looking at the same thing and reading the
21 same thing. So have I correctly read the statement?

22 A Do you want to read it again?

23 Q "Police response was appropriate and important
24 to make sure that every student involved in this matter
25 was safe and remained safe."

1 A You read it correctly.

2 Q Thank you. What was your source for stating
3 that the police response was appropriate?

4 A I don't remember.

5 Q Was that your own opinion?

6 A I don't remember.

7 Q Did you discuss the appropriateness of the
8 police response with anybody else to your recollection?

9 A I don't remember.

10 Q What characterizes an appropriate police
11 response, President Stenger?

12 A That it is appropriate.

13 Q And is the key characteristic of an appropriate
14 response that as you state here "every student involved
15 in this matter was safe and remained safe"?

16 A That is appropriate.

17 Q Let me jump down to the second paragraph now.
18 You state "this incident from all perspectives was
19 unfortunate. As a university we encourage everyone to
20 consider the perspectives of others -- and the damaging
21 impact words and images can have -- even if they are
22 protected as free speech under the First Amendment."
23 Did I read that correctly?

24 A Yes.

25 Q What about the incident was unfortunate?

1 A That it occurred.

2 Q But beyond its occurrence, what aspects of the
3 incident were unfortunate?

4 A That's my answer. That it occurred.

5 Q But it occurred and lots of things occur all
6 the time, but this one you have chosen to inform the
7 entire university community it was unfortunate. There
8 must be more content to your estimation of the incident
9 than merely that it occurred. What about the incident
10 was unfortunate?

11 A That it occurred.

12 Q There must be more to it than that, President
13 Stenger. There must be some aspect of it you found
14 unfortunate that you were criticizing and wanted to draw
15 the entire attention of the university to. There is
16 literally nothing else other than it occurred; is that
17 your testimony?

18 A Yes.

19 Q So nothing about the students who were shouting
20 at other students and causing a commotion as you could
21 hear from your office 300 yards away?

22 A That occurred.

23 Q Was that unfortunate?

24 A That was part of the occurrence.

25 Q It was indeed. But was the fact that some

1 students were shouting at other students and you could
2 hear the noise 300 yards away, is that aspect of the
3 occurrence unfortunate?

4 A Yes.

5 Q Why was that unfortunate?

6 A Because it was unfortunate.

7 Q That's a totality, President Stenger. There
8 must have been a reason that you drew the attention of
9 the entire university in a message from the president to
10 this unfortunate occurrence and it had to go beyond the
11 mere volume of the noise. What about that incident was
12 unfortunate?

13 MR. MOORE: Harvey, I think he is looking
14 your perspective on what about the incident was
15 unfortunate other than the fact that it was
16 unfortunate. Is that a fair statement?

17 MR. HRUSKA: That's a good repetition, Mr.
18 Moore, of what I've been asking.

19 A I think it's clear that it was unfortunate.

20 Q Well, you do point to a few things. You do say
21 "that conversations were getting loud, aggressive and
22 possibly volatile." Is that the part of the incident
23 that was unfortunate? I'm quoting from your statement
24 in the first paragraph.

25 A There were reports that conversations were

1 getting loud, aggressive and possibly volatile. That
2 was part of the event and that is what occurred.

3 Q And was that loudness, aggressiveness and
4 possible volatility, was that the source of the
5 estimation that this was unfortunate that you applied to
6 the incident and informed the university community of?

7 A I think I've answered that.

8 Q I don't think you have. I think we're having
9 trouble getting to the point here, President Stenger.
10 You're making a statement to the entire university here,
11 correct? That's the purpose of this document, correct?

12 A It was a statement that I made.

13 Q How often do you make statements to the entire
14 university through a message from the president?

15 A I could look it up and tell you how often, but
16 I don't know.

17 Q Roughly speaking. Is it every day, is it every
18 week, is it every month?

19 A Probably on an every month basis.

20 Q And when you do that it's because you want
21 everybody in the university to pay attention to
22 information that is coming from the president of the
23 university, correct?

24 A Yes.

25 Q And so here you're telling the university that

1 there was an incident which was sufficiently significant
2 that you wanted the university community to pay
3 attention to it and you were telling them that it was
4 unfortunate, correct?

5 A Correct.

6 Q And the reason you thought it was unfortunate
7 is the goal of my question. So far you have cited the
8 volume of noise and the reports that there was
9 aggressive action and the concern that there was
10 possible volatility as the reasons that this incident
11 was unfortunate?

12 A Correct.

13 Q Is there anything else about it?

14 A No. I think this statement is the statement
15 that is accurate I think.

16 Q That's not the question. I want to make sure
17 I've exhausted all the sources of information that you
18 were working on in making your statement and you've
19 cited to these reports in the first paragraph and then
20 in the second paragraph you have characterized the
21 incident from all perspectives as unfortunate. In the
22 second sentence of that second paragraph you state "as a
23 university we encourage everyone to consider the
24 perspectives of others and the damaging impact words and
25 images can have even if they were protected as free

1 speech under the First Amendment." What did you have in
2 mind when you referred to the damaging impact words and
3 images can have when you made that statement?

4 A The videotape.

5 Q Please explain what you mean by the videotape?

6 A There was a videotape of the incident posted on
7 the internet.

8 Q And why was that videotape, was it the
9 videotape itself that was damaging or what was depicted
10 on the tape that was damaging?

11 A The images and words.

12 Q And what were those images and words that were
13 depicted in the videotape that were damaging?

14 A Loud, aggressive and possibly volatile
15 conversations.

16 Q And what were the subjects of those loud,
17 aggressive and possibly volatile conversations?

18 MR. MOORE: Are you asking what they said?

19 MR. HRUSKA: Yeah.

20 MR. MOORE: Do you remember?

21 A Shouting. Curse words.

22 Q And so is it your testimony that the police
23 response here was appropriate because of the loudness
24 and aggressiveness of the people who you later saw on
25 the videotape who were shouting; is that why? Is that

1 why the police response was appropriate?

2 A I think the police response was appropriate.

3 Q Because you wanted the police to stop the
4 students from shouting and behaving aggressively?

5 MR. MOORE: Are you asking if he directed
6 the police that day?

7 MR. HRUSKA: No.

8 Q I'm asking why he thought the police response
9 was appropriate in this instance.

10 A The police response was appropriate and
11 important to make sure that every student involved in
12 this matter was safe and remained safe. It was
13 appropriate because they were there to make sure that
14 people remained safe.

15 Q And when you refer to, when you use the phrase
16 "protected as free speech under the First Amendment"
17 what exactly are you referring to? What is the speech
18 that you're referring to? Let me be more specific.

19 A General free speech. That free speech is
20 protected.

21 Q Did you believe that any of the participants in
22 the tabling incident had acted in such a way that the
23 First Amendment rights of students had been curtailed?

24 A I could not tell.

25 Q Did you make any inquiry to determine the

1 answer to that question?

2 A I don't remember.

3 Q Do you know whether the police instructed the
4 tabling students to leave the location where they had
5 been exercising their First Amendment rights?

6 A I have heard that that was said, but I do not
7 have first hand knowledge of that.

8 Q Did you make any inquiry to determine the
9 answer to that question?

10 A No.

11 Q Why not?

12 A I didn't think to ask it.

13 Q You testified already that you understood that
14 you had a responsibility to the protect students' First
15 Amendment rights. And you have a situation in which you
16 yourself were implicating First Amendment as part of the
17 considerations involved in the incident, correct?

18 A Correct.

19 Q And yet you didn't think to ask the question as
20 to whether there had been any inappropriate action that
21 infringed on the First Amendment rights of students?

22 A I couldn't say that I had knowledge of the
23 First Amendment rights of students being infringed upon.

24 Q No. I understand that. I understand your
25 testimony that you didn't have that knowledge at that

1 point. What I'm asking is something different which is
2 why didn't you inquire to find the answer to that
3 question about whether there had been a violation of the
4 First Amendment right?

5 A I inquired was everyone safe.

6 Q Understood. And I understand that is your
7 testimony and that is also your statement. I'm asking
8 you a different question, President Stenger. Why didn't
9 you inquire at that point following the tabling incident
10 on November 15, 2019 or thereabouts as to whether there
11 had been any inappropriate infringement of First
12 Amendment rights?

13 A I don't remember.

14 Q Looking back now do you, can you think about
15 why you would not have inquired about that?

16 MR. MOORE: Objection. Asked and answered.

17 A I don't remember.

18 Q Okay. Understood. Let's move a little bit
19 forward in time. I want to draw your attention to a set
20 of correspondence that is under tab two. I'll label it
21 HS-2.

22 (EXHIBIT HS-2 WAS MARKED FOR
23 IDENTIFICATION.)

24 MR. SAITTA: What tab is that?

25 MR. HRUSKA: Tab two.

1 Q It is several pages and so I recommend that you
2 begin reading at the back for the earliest e-mail which
3 is the one I will actually direct your attention to and
4 it's the one that begins at the bottom of the second
5 page which is labeled 1233 at the bottom and it is an
6 e-mail from you to a group of others.

7 A Yep.

8 MR. MOORE: Just for clarity of the record
9 let's state that this is bates stamped from State
10 defendant's disclosure from 1232 to 1235.

11 MR. HRUSKA: Yep, thank you.

12 MR. MOORE: And HS-1 was bates stamped one
13 from the State defendant's disclosure.

14 MR. HRUSKA: Thank you, Mr. Moore.

15 Q Do you recognize this document?

16 A Yes.

17 Q Do you recall this as an e-mail you sent on or
18 about Saturday, November 16th, 2019 at 8:29 a.m.?

19 A Yes.

20 Q Just in terms of situating us in time, that is
21 between the tabling event on the 14th and the Laffer
22 event on the 18th?

23 A Correct.

24 Q And so what is the group to which you directed
25 this e-mail?

1 A Senior officers group.

2 Q And who is that?

3 A Their names are listed.

4 Q What's the composition of that group in terms
5 of their relevance to the university?

6 A They are senior officers of the university.

7 Q And does it include the vice presidents?

8 A Yes.

9 Q Does it include, you said executive directors?

10 A Yes.

11 Q Are these, all the recipients of this e-mail
12 are they direct reports to you at this point?

13 A Not all of them.

14 Q Which ones are not if you can recall?

15 A Michael McGoff was not.

16 Q What was his role?

17 A He was the chief financial officer and he
18 reported to Donald Nieman.

19 Q Anybody else?

20 A No. Everybody else reports to me.

21 Q And why did you choose to send this message to
22 this group at this point?

23 A I was leaving for a trip and I wanted to make
24 sure that everybody was in a good understanding of what
25 they should be working on for me while I was traveling.

1 Q Where were you traveling to?

2 A Texas and California.

3 Q For how long?

4 A For about five days. Maybe six days.

5 Q And did you in fact make that trip?

6 A Yes.

7 Q And you start, if you look at the third page of
8 this document, bates stamped 1234, you start the message
9 by saying "sorry to bother you on Saturday, but this is
10 important." Why did you think this was important?

11 A You'd have to read the rest of it.

12 Q I'm asking you for the summary. I can read the
13 text, but you're expressing a view of significance. Why
14 were the events that you relate in the rest of the
15 message important such that you wanted to draw their
16 attention to it on Saturday?

17 A The word important means that it is important.

18 Q But why? Why were these events important?

19 A Well, I was getting a lot of e-mails from
20 people and there was a lot of concern about what had
21 happened so it was important.

22 Q And because it was important you wanted this
23 group to pay attention to it?

24 A Right.

25 Q In the middle of that e-mail there is a

1 paragraph that begins "I would like." Do you see that?
2 It's about three quarters of the way down the page.

3 A Yes.

4 Q "I would like to charge Brian Rose and Greg
5 with the task of determining the next steps. This is a
6 communications, student conduct and student association
7 issue." Did I read that correctly?

8 A Yes.

9 Q And Brian Rose I think you already testified
10 was the vice president and, or one of the vice
11 presidents for student affairs. And who is Greg?

12 A Greg Delviscio, vice president of
13 communications and marketing.

14 Q And I want to look at this list of three that
15 you put in the second sentence of that paragraph. I
16 think communications is, seems to be self-evident as a
17 matter of communicating with the outside world if that's
18 what you mean, correct, as well as the university
19 community?

20 MR. MOORE: Objection to form.

21 A This is a communications issue.

22 Q Did that mean communicating with the outside
23 world and with the community and the university?

24 A It means communicating.

25 Q With who?

1 A With the appropriate people.

2 Q In which case, in this case who are the
3 appropriate people?

4 A That was to be determined.

5 Q What is the set of possible appropriate groups
6 with whom you would wish to communicate about these
7 incidents?

8 A Campus, students, faculty, staff, community
9 members, residents of New York State, residents of the
10 United States, residents of the world, elected
11 officials, everybody.

12 Q And student conduct, what did it mean for this
13 to be a student conduct issue?

14 A Student conduct means the process that we would
15 use to investigate a student conduct issue.

16 Q Okay. So it's not used in the layman's sense
17 of just any old conduct, you're talking specifically
18 about the evaluation of student conduct for potential
19 disciplinary purposes?

20 A Correct.

21 Q And a student association issue, what does that
22 mean?

23 A The student association is a formal body of
24 students recognized by the university.

25 Q For what purpose?

1 A They have many purposes.

2 Q What were the purposes relevant for this issue?

3 A They are the, they are the authority that
4 approves, manages student organizations.

5 Q And why was this a student association issue
6 for that purpose?

7 A Because the concern around the event of who was
8 responsible for the tabling reservations and management
9 of it.

10 Q And so in your mind at this point the student
11 association issue was directed to the handling of
12 reservations for tabling; is that accurate?

13 A Yes.

14 Q Any other student associations issue or is that
15 the full set of concerns related to the student
16 association?

17 A At that time that was the major concern.

18 Q Were there any minor concerns other than that
19 that you can recall?

20 A No. I think it was, it was the reservation of
21 the tabling.

22 Q Next paragraph. You say "I do not want my
23 office, government affairs, DEI or UPD to be involved in
24 any actions or communications. They can help to inform,
25 but should not take action or make statements." So what

1 did you mean by my office?

2 A My office meaning the secretary who answers the
3 phone, the two secretaries that answer the phone and the
4 chief of staff.

5 Q Which was Darcy Fauci at that point?

6 A Uh huh.

7 Q What is government affairs?

8 A That is also Darcy Fauci.

9 Q Anybody else in government affairs?

10 A No.

11 Q What about DEI, what does that mean?

12 A Diversity, equity and inclusion.

13 Q Is that a group of people or just a concept?

14 A It is a division of the university.

15 Q And who is in charge of that division?

16 A At that time it was Nicole Sirju-Johnson.

17 Q Is there anybody else on your list of
18 recipients of this e-mail who is in that division DEI?

19 A No.

20 Q And UPD we've already discussed, the university
21 police department, correct?

22 A Correct.

23 Q And why did you not want those components of
24 the university to be involved in any actions or
25 communications?

1 A They could help to inform, but I wanted to make
2 sure that only, there was a single voice after all the
3 information was gathered.

4 Q Understood. At that point, I'm no longer
5 directing you to a specific provision. I'm just asking
6 you about a general communication that you're having
7 with your senior officers group right now. At that
8 point what were your concerns about the communication?
9 What is it that you wanted to communicate?

10 A I wanted them to meet as a group. I wanted
11 Brian Rose and Greg to discuss what should we do next.
12 What should we do now. So it was up to them to work
13 together to determine what the next steps were going to
14 be.

15 Q Earlier on in that message you reference the
16 chancellor and the fact that a state assemblyman had
17 copied a letter to the chancellor. Who was the
18 chancellor at that point?

19 A Kristina Johnson.

20 Q And why was that relevant that she had been
21 copied on the letter from the state assemblyman?

22 A Because I report to her.

23 Q And what about your reporting relationship with
24 her made that communication with the assemblyman
25 relevant to this discussion?

1 A The assemblyman wrote to me and copied her.

2 Q But why is it relevant that she was copied?
3 That's what I'm getting at.

4 MR. MOORE: Objection to form.

5 A That she was going to have involvement, a
6 concern about what happened. And it was just to
7 indicate the level of who is involved and what's
8 happening since that tabling event.

9 Q Had you had any communication with Miss Johnson
10 at that point about the tabling event?

11 A I don't remember.

12 Q Did you have any communication with her between
13 the time of this e-mail on Saturday and the Laffer event
14 on Monday?

15 A I don't remember.

16 Q How frequently during this period would you
17 communicate with her in general?

18 A Maybe, when appropriate.

19 Q And was that a matter of daily, weekly, monthly
20 communication? How, as a general matter what was the
21 cadence of your communication?

22 A Sporadic. Maybe, maybe less than monthly.
23 More than weekly.

24 Q And on what topic?

25 A On any topic.

1 Q And what topics would you generally communicate
2 or is it difficult to summarize?

3 A This is November 2019, I think two, three weeks
4 -- oh, no. If was like three weeks before that I told
5 her that one of our professors had won the Nobel price.
6 I thought she would want to know that.

7 Q Do you recall at what point you did discuss the
8 topic of the tabling event with Miss Johnson?

9 A I don't remember.

10 Q We'll move on. All right. So I'm going to
11 move forward in time to the Laffer event and I realize
12 that things happened very quickly at that point. And
13 before we get to any of the written documents I just
14 want to ask you what your knowledge was of the
15 circumstances around the Laffer event on the day of the
16 event before it occurred with the understanding that you
17 were traveling and were not physically present in
18 Binghamton. Before the Laffer event occurred what was
19 your understanding of what was going on with respect to
20 the event on campus? And I'm not referring to the
21 document right now. I'm just asking you for your
22 recollection.

23 A That he was going to speak on campus. And that
24 there was a potential, there was a potential for a group
25 of students or there was a potential for some people to

1 arrive at the event and try to disrupt it.

2 Q What were your sources of information with
3 respect to that?

4 A I don't remember.

5 MR. HRUSKA: Let me, this is out of order
6 in terms of the binder, but I want to jump to tab
7 27. I'm sorry. It's a late addition. It's an
8 exhibit previously labeled JP-6 and it bears the
9 sequential bates number 1065 --

10 MR. SAITTA: And what tab?

11 MR. MOORE: 27.

12 MR. SAITTA: Thank you.

13 MR. HRUSKA: 1065 through 1070.

14 Q Take your time and read it. Let me know when
15 you're ready.

16 A I've read it.

17 Q Do you recall this document?

18 A No.

19 Q You will see if you look at the beginning of
20 this chain of e-mail, which starts on the page numbered
21 1068 at the bottom, you were copied on a message from
22 John Pelletier at 12:11 p.m. on that Monday, November
23 18th. Do you recall reading --

24 MR. MOORE: Let's make sure we are at the
25 right place.

1 MR. HRUSKA: Can you help him? Thank you.

2 A I wasn't copied on the other one.

3 Q Well, I'm focused on this beginning e-mail in
4 the chain which starts on the page I mentioned in which
5 you are copied from Mr. Pelletier.

6 A This is the one 12:11 p.m.?

7 Q Correct.

8 A I am on the, I was a recipient of it. I was
9 traveling and probably had limited access to e-mail.

10 Q That's my question. Do you recall receiving
11 this?

12 A No.

13 Q Did you have other sources of information as to
14 events on campus that afternoon prior to the event from
15 which you were receiving information in real time?

16 A Somebody called me around lunchtime. I was in
17 Texas. So I got a phone call in the middle of that
18 lunch.

19 Q Do you recall who it was that called you?

20 A I think it was a group of people. Might have
21 been a speaker phone call.

22 Q Do you know whether it included Mr. Pelletier?

23 A It was a call. It could have included him.
24 I'm just speculating.

25 Q I don't want you to speculate. Would it have

1 made sense given the context of the call that it would
2 have included the university police chief?

3 A May have, but it could have been somebody else.

4 Q Do you remember whether Mr. Rose was part of
5 that group that called you?

6 A I don't remember. It was a call. It was hard
7 to remember. There is no faces. Just voices.

8 Q Understood and I'm trying to plumb the depths
9 of your recollection. And if there are any specific
10 people you remember being involved in the call, please
11 testify to that.

12 A I would have to, I really don't.

13 Q I'm not asking you to speculate.

14 A I really don't know.

15 Q You will see as you read this e-mail that, the
16 one I was just pointing to at the beginning of this
17 chain, that Mr. Pelletier describes an approach that the
18 police are taking to, I'm quoting now, "trying to link
19 up with Dr. Laffer at the airport prior to this to
20 inform him of the potential protest. His plane arrives
21 at 1:40 and we will try to ride with him to inform him
22 of what has transpired so far and the risk going
23 forward." Do you remember learning about that effort by
24 the university police prior to the Laffer event?

25 A I do not remember. I do not remember these

1 e-mails.

2 Q No, I understand. You've testified to that.
3 But what I'm asking now is whether you remember these
4 events, the approach that Mr. Pelletier is describing
5 towards Dr. Laffer prior to the event, meeting him at
6 the airport, warning him of the risk?

7 A I remember the phone call.

8 Q Was that described in the phone call?

9 A I don't remember.

10 Q Do you remember anything about the substance of
11 that phone call?

12 A I remember that we were concerned about
13 protecting the safety of anyone who was there and
14 concerned with protecting the First Amendment. And so
15 those were the top, the most important topics, safety
16 and First Amendment.

17 Q What was the discussion, as best you can
18 recall, about the topic of protecting the safety of
19 those present?

20 A There were probably, nothing specific about
21 safety. You certainly can imagine an open event
22 something could happen. It was not a restricted or
23 ticketed event. Anyone could come in from anywhere.
24 And we needed to make sure that everyone who was there
25 was safe. So I wanted to make sure, I wanted to confirm

1 to myself that all the appropriate actions were being
2 taken to protect the safety of the people that were
3 attending.

4 Q And were you able to confirm that during that
5 phone call?

6 A We didn't know what was going to happen at that
7 time, but we were trying to prepare for disruptions.

8 Q And you've testified that you wanted to assure
9 that the appropriate measures were taken to protect the
10 safety of those present. What measures did you
11 understand the university would take in order to achieve
12 that goal?

13 A That if students or if an attendee was
14 dangerous or threatening. If an attendee, and this was
15 the second part protecting freedom of speech of the
16 speaker that we invited, if someone was disruptive that
17 both of those actions should be dealt with
18 significantly. And I asked Chief Pelletier will you
19 arrest people at this and he said yes. And I remember
20 he and I, because it was him on the phone, that he and I
21 probably confirmed that arrest is good. I did not give
22 him an order because he really needed to act
23 independently because he would be in the scene and I
24 would not be in the scene. But that he would have to
25 make the decision to arrest someone who was either

1 preventing freedom of speech or jeopardizing the safety
2 of people that was there.

3 Q So just to be clear your revising your
4 testimony from a minute ago. You know recall it was
5 Chief Pelletier?

6 A He must have been there, yeah.

7 Q As part of the group who called you. Was there
8 any other phone communication you had with any
9 individual or group of university officials between that
10 roughly lunchtime call on Monday and the event itself?

11 A No. That was the only communication that I
12 recall. It's the only communication that I recall. I
13 had a flight in the late afternoon that day to
14 California.

15 Q You've recalled that Mr. Pelletier was part of
16 that conversation. Do you now recall whether anybody
17 else specifically was part of that conversation?

18 A No. I think it was, because I remember
19 specifically talking about arrest. And he would be the
20 only one that I could imagine who was there that that
21 would be an issue that I would have to address
22 specifically with him.

23 Q Do you recall how the topic of potential
24 arrests came up in the conversation?

25 A I think I brought it up.

1 Q Why did you bring it up?

2 MR. MOORE: Objection. Asked and answered.

3 You can elaborate.

4 A I was curious. I wanted to know what he was
5 prepared to do.

6 Q And how did he respond?

7 A Yes. We will arrest people if there is a
8 potential safety concern or freedom of speech concern.
9 He didn't add all of those, but he said yes, we will be
10 ready to arrest.

11 Q But the context as you understood it in that
12 conversation was not that you were giving him a
13 direction; is that correct?

14 A Correct.

15 Q And that's because, and I don't want to
16 misstated your prior testimony so please correct me if
17 I'm wrong, that is because as you testified you didn't
18 have the power to direct him; is that correct?

19 A I do not have the authority to determine
20 whether a crime is being committed. I do not have that
21 authority. I'm not a sworn police officer. I can, I
22 can say to him and I can ask from him are you going to
23 do this if those are, if those concerns are significant
24 and so he responded yes.

25 Q And the question is in conducting that dialogue

1 with Mr. Pelletier were you simply asking him for his
2 intentions as a matter of understanding the developing
3 context regarding this event at the university or were
4 you intending to give him some direction as a, as the
5 president through your role as a supervisor of the
6 administration of the university?

7 MR. MOORE: Objection. Asked and answered.

8 You can answer.

9 A So it was probably a unique situation. As I've
10 said I do not have the authority or a license to arrest
11 anyone, but I can say to the chief of police about my
12 concerns of the well-being of the campus. And that if,
13 and that if he is looking for me to be supportive of
14 something that, action that he will take that there was
15 some confirmation in this call that, that we would
16 arrest anyone who was either a safety concern or a First
17 Amendment concern. So it wasn't, it wasn't that I was
18 saying, because I didn't know what was going to happen.
19 But I said if, if arrests are going to occur, I'm okay
20 with that. I'm not saying you have to, but I'm saying
21 I'm okay with that. So they were looking for a kind of
22 consensus in a very unique, very unusual case. I think
23 people were just checking in to make sure that we were
24 going to be okay with that course of action that night
25 knowing though that the police department would have the

1 on ground expertise to do what they are, what they are
2 certified to do which is to make arrests.

3 Q At that point in the afternoon of Monday,
4 November 18th were you aware whether or not there had
5 been any arrests with respect to the tabling incident
6 four days before?

7 A I would have been told. I did not have any
8 information. I did not have any information if anyone
9 was arrested at the tabling event at that time.

10 Q Right. That's the question. Did you
11 subsequently learn whether anybody had been arrested
12 with respect to the tabling event?

13 A Yes.

14 Q When did you learn that?

15 A Probably in January, December. Weeks, several
16 weeks after I probably confirmed it. But I do get a
17 police report every Monday with every action of the
18 police for the previous seven days. And I read it every
19 Monday morning and I did not see that any arrests were
20 made at that event. That would have been the Monday of
21 the 25th or so, that next Monday.

22 Q Just to confirm your testimony is that you were
23 not aware until December at the earliest as to whether
24 there had been any arrests --

25 A So I did not see it --

1 Q Let me finish so we have a clear record --
2 whether there had been any arrests with respect to the
3 tabling event?

4 A I did not see any arrests in a police report
5 that I received the week after the tabling event. I did
6 not see any. Later on because there was a question
7 about whether or not an arrest was made I found out
8 whether an arrest was made. I don't remember how I
9 found that out, but I do remember learning that there
10 were no arrests at the tabling event.

11 Q Going back to the document that we were focused
12 on a moment ago, Exhibit JB-6, if you move further up
13 the document that is forward in time there are
14 additional e-mails and you are copied on e-mails above
15 that in the chain. So you would have received the
16 intermediate e-mails even though in the form they were
17 delivered to us they don't show who the recipients are.
18 If you look at the page labeled 1067 on the bottom,
19 which is the third page of the document, you'll see a
20 brief e-mail from Timothy Faughnan. Do you see where
21 I'm indicating?

22 A In the middle?

23 Q Yeah, in the middle.

24 A Okay.

25 Q You'll see in the second sentence he says "I

1 will provide them with the opportunity to hold their
2 speak-out event while at the same time respecting
3 College Republicans' right to sponsor an event." Do you
4 recall discussion of this topic, the speak-out event?
5 Does any of this make sense to you based on your
6 understanding of the events at the time?

7 A I'm having lunch with a potential donor. I was
8 going to rush to the airport. I might have seen this on
9 my phone, but I don't really remember.

10 Q I understand that you were in limited
11 communication and you've already testified to that fact.
12 What I'm asking now is whether this concept of a
13 speak-out event is something you recalled from that time
14 period?

15 A It is, it was, I don't. So they were going to
16 hold a speak-out event.

17 Q Does there mean something to you, a speak-out
18 event?

19 A I think it means give them a space to have a
20 meeting of the people who would like to speak against
21 the speaker that was going to be presenting. Give them
22 an opportunity to have their venue to present counter
23 discussion of what the proposed speaker was going to be
24 presenting. And I remember that that is something that
25 we would typically want to do if a protest was going to

1 happen on campus that we give them a space to do that
2 protest.

3 MR. HRUSKA: Let's go back in the binder to
4 tab three and a document which I'll mark, unless
5 you tell me it's already been marked, as HS-3.

6 (EXHIBIT HS-3 WAS MARKED FOR
7 IDENTIFICATION.)

8 MR. MOORE: I don't believe this version
9 has been marked. I know the statement has, but I
10 don't believe this has.

11 MR. HRUSKA: It's a document bearing the
12 sequential bates numbers 142 to 145.

13 Q And you'll see this is actually a collection of
14 two e-mails. I'm going to ask you about the second and
15 third pages of this which are an e-mail from Kristina
16 Johnson.

17 MR. SAITTA: Do you know what tab number
18 that is?

19 MR. HRUSKA: Three.

20 MR. MOORE: Are you talking about bates
21 stamp 144 and 145?

22 MR. HRUSKA: Yes. And your response.

23 Q Do you recall this correspondence?

24 A Which part?

25 Q Any of them. Let's start with the base e-mail,

1 the one that is sent by Miss Johnson at 4:41 p.m. that
2 afternoon Monday, November 18th.

3 A I don't remember.

4 Q Do you know from context what Miss Johnson
5 means by our CDO Teresa?

6 A Chief Diversity Officer of State University of
7 New York Central Office Teresa Miller.

8 Q And it appears that this is a message from, is
9 this also Teresa Terry, is Terry Teresa's nickname?

10 A Yes.

11 Q To Miss Johnson and that she is sending it to
12 you. Is that a fair reading of this as you understand
13 it based on your history of communication with Miss
14 Johnson what's going on in this e-mail?

15 A So Kristina says "Dear Harvey, see below from
16 CDO Teresa." And then there is the e-mail from Terry to
17 the chancellor. Yes.

18 Q I understand that you don't recall the specific
19 e-mail, but do you recall discussing the subject with
20 Miss Johnson, this proposed communication from Teresa?

21 MR. MOORE: Other than this e-mail
22 exchange?

23 MR. HRUSKA: Well, he's testified that he
24 doesn't remember the e-mail exchange.

25 A I've responded it looks like later that

1 evening.

2 Q You did. I'm asking, we'll get to that, but
3 I'm asking right now about the original e-mail at 4:49.

4 A I don't remember that e-mail.

5 Q Do you remember Miss Johnson expressing any of
6 the ideas that are described in the draft message here
7 that is being shown to you?

8 A Could you repeat that?

9 Q Let me rephrase because I wasn't clear. Do you
10 recall the substance of this message from Teresa to Miss
11 Johnson that is copied in the e-mail, do you recall that
12 substance being discussed between you and Miss Johnson?

13 A No.

14 Q Let's jump up to your e-mail from 9:36 p.m.
15 which as I read it it doesn't actually appear to respond
16 to the earlier e-mail in the sense that you don't engage
17 with the substance of it. Is that an accurate
18 understanding?

19 A It appears that, yes.

20 Q And you state "my understanding of what
21 happened tonight: the speaker Arthur Laffer was greeted
22 by angry protesters while using a bullhorn. He declined
23 to speak and left. We have taken two students into
24 custody. Charges are pending. We are preparing a
25 statement to be issued tonight. Harvey." Why did you

1 make this report to Miss Johnson?

2 A Because I was responding to her e-mail concern
3 about the event.

4 Q The e-mail concern seems to be focused on a
5 different event, on the tabling event, and you have now
6 informed her about the Laffer event. And the question
7 is was there some other communication you had with her
8 about the Laffer event or is this the first you're
9 telling her of it?

10 A I don't know. It's hard to say.

11 Q Can you recall any earlier communication than
12 the one that at 9:36 p.m. on that evening of the Laffer
13 event?

14 A No.

15 Q What was your source of information for the
16 content of that message to Miss Johnson?

17 A I don't remember.

18 Q You make the statement "he declined to speak
19 and left," referring to Dr. Laffer?

20 A Right.

21 Q Do you recall how you came to have that
22 impression?

23 A I don't remember.

24 Q You make the statement "we have taken two
25 students into custody." Do you know what was meant by

1 that?

2 A We have taken two students into custody.

3 Q Uh huh.

4 A That's what I meant by that.

5 Q What do you mean by custody?

6 A That they had been arrested.

7 Q Were you, were you, that is the university,
8 continuing to hold those students in custody?

9 A I don't know.

10 Q Why did you use that word then?

11 A It meant, it was supposed to mean arrested.

12 Q Do you understand the difference between the
13 words arrest and custody?

14 A No.

15 MR. MOORE: Objection.

16 Q And you say "charges are pending." What
17 charges?

18 A My limited knowledge of this process would be
19 that you're arrested and then you're, I don't know,
20 you're taken to a judge and they figure out what the
21 charges are and why you've been arrested. I don't
22 really know the criminal system well enough to know.

23 Q And I don't ask you to opine about the criminal
24 system at all. All I'm trying to do is understand the
25 extent of your knowledge at that time. So please answer

1 the question as to what was your source of information
2 for making the statement charges are pending at that
3 time, if you recall?

4 A I don't remember.

5 MR. MOORE: I believe that's asked and
6 answered.

7 A I don't remember.

8 Q You see on the front page of this document --

9 MR. MOORE: Andrew, can we take a quick
10 break?

11 MR. HRUSKA: Let me just finish this. I
12 only have one question.

13 Q You see on the front page of this exhibit, page
14 number 142, there's a statement from Brian Rose?

15 A I can't read the statement.

16 Q I know it's very --

17 A I can't read any of it.

18 Q I know it's very dim, but if you can make out a
19 message from Brian Rose. Do you recall Brian Rose
20 making a statement that evening that you were aware of
21 at the time? I'm not going to ask you about the
22 substance of it.

23 A I was traveling and I probably got this in my
24 e-mail.

25 Q So just to clarify --

1 A So I was aware of it.

2 Q You became aware of it, but were you aware of
3 it before he made the statement, were you asked to
4 comment on any potential statement?

5 A I don't remember.

6 MR. HRUSKA: Okay. Let's take a break.

7 (RECESS TAKEN.)

8 Q Before we get to the next document, President
9 Stenger, you had testified earlier that in the
10 conversation that occurred on the afternoon of Monday,
11 November 18th while you were traveling that one of the
12 subjects was actions in defense of First Amendment
13 rights and I want to make sure that we fully explored
14 that topic. It's possible that it was covered by some
15 of your earlier answers. If there is more that you can
16 recall on that subject, please tell us now.

17 A I wanted to make sure that Professor Laffer was
18 able to give his speech. That was very important to me.
19 And I was very disappointed when it couldn't happen. I
20 wasn't there. The time of the speech was probably about
21 the time I was halfway to California. I don't remember
22 whether I had purchased internet or not, whether I was
23 reading e-mail or not. Sometimes you can't even
24 connect. But I was worried about what was going to
25 happen that night. And I was really hoping that my

1 staff and my team did the best that they could to make
2 sure that everybody was safe and that Laffer was able to
3 speak.

4 Q And you earlier testified about your
5 conversation with Mr. Pelletier on the concept of
6 arrests. In addition to that was there any other
7 measure that you specifically discussed with the
8 university employees on the site concerning protection
9 of First Amendment rights?

10 A It was, I remember the conversation. I was on
11 the cell phone. It came during lunch. I was with the
12 CEO of Ulysses and is an alum and I had to break away
13 from lunch to walk to a parking lot outside of the
14 restaurant to take the call. And I remember listening,
15 listening, listening mostly. And probably the only
16 thing that I remember I said was it's okay if you arrest
17 tonight. I'm not going to object to that. But that was
18 about all that I remember. But they knew what I was
19 meaning. That we want to protect, we want to protect
20 everyone's safety and we want to protect freedom of
21 speech. Do the best you can tonight, please.

22 Q Do you recall discussing in advance of the
23 Laffer event with Mr. Pelletier the adequacy of the
24 police presence in terms of the numbers of police who
25 would be present at the event?

1 A No.

2 Q Do you recall that being a concern of yours
3 whether you discussed it or not?

4 A No. John's very good. I knew that he was
5 going to manage the situation with the appropriate
6 amount of officers present and concern. So I didn't, I
7 did not get involved in asking him how many officers
8 and whether they were undercover or uniformed. I didn't
9 because I assumed and I trusted him to make that
10 decision.

11 Q And so just to be clear you had no knowledge
12 about the numbers of police that would be present and in
13 what way they would be deployed during the Laffer event
14 in advance of the event?

15 MR. MOORE: Asked and answered.

16 A In advance of the event, no.

17 Q With apologies for breaking the chronological
18 sequence, I want to go back to the documents. I now
19 want to draw your attention to the document that is
20 under tab four, Tom, which I will label HS-4. It's a
21 document that bears the sequential bates numbers 553.
22 Just the one page, 553. And it's an e-mail from you to
23 Sheldon Goldfarb copying Brian Rose on Wednesday,
24 November 20th so two days after the Laffer event. Do
25 you recognize that document?

1 (EXHIBIT HS-4 WAS MARKED FOR
2 IDENTIFICATION.)

3 A I've read it and, I've read the document, yes.

4 Q Do you recall having this correspondence with
5 Mr. Goldfarb?

6 A No.

7 Q Who is Mr. Goldfarb?

8 A He is an alum.

9 Q What's his significance in terms of the
10 operation of the university?

11 A He was the past chairman of our university
12 foundation.

13 Q What's the role of the university foundation?

14 A They manage our fundraising activities and our
15 endowment.

16 Q In the e-mail that is at the top of that chain
17 you write "yes, this is a teachable moment, but I fear
18 that the small number of students who are leading this
19 effort are unteachable, while the other 99 percent of
20 our students know that free speech is a critical part of
21 society." Do you recall having that idea around that
22 time that specifically the small number of students who
23 are leading this effort are unteachable?

24 A Do I recall having that thought?

25 Q Yes.

1 A I don't recall having that thought, but I read
2 that I said it.

3 Q I can read it, too, and what I'm asking is
4 whether you recall having that thought that you
5 expressed --

6 MR. MOORE: Objection, asked and answered.

7 Q -- at the time?

8 A I don't think I would have written it if I
9 didn't have that thought.

10 Q Do you still think of that as a valid
11 assessment of the situation having had now several years
12 to reflect?

13 A Sheldon is a friend. He worries about the
14 university quite a bit. He follows us very closely.
15 And I was trying to just give him a feeling that we're
16 okay. Our students are, most of our students are here
17 to get a good education and they are doing hard work and
18 maybe, maybe some of them aren't, but freedom of speech
19 is an absolute. So I was just trying to make sure that
20 he was, he was responded to respectfully because I
21 didn't want him to think that we were not taking this
22 seriously.

23 Q I want to focus on the concept of
24 unteachability. What does that concept mean to you?

25 A So, you know, I think what I'm talking about

1 here is, so we got the tabling event and the Laffer
2 event. They are almost contiguous in time. They are
3 certainly contiguous in intent and the organizations
4 that were in this battle. I think that my response to
5 him was more about what happened at the tabling event
6 than what happened at the Laffer event. Now he is
7 commenting on the Laffer event, but I think I'm really
8 commenting back on what happened at the tabling event
9 because I felt at that time, that was Wednesday so I was
10 still in the middle of the trip, that I was, I was, I
11 was, what I felt bad about is how the tabling event,
12 that it was disruptive. And that's what I was referring
13 to. Not as much the Laffer event. But then also the
14 Laffer event you got some students in there -- and who
15 knows if they were students. They could have been
16 anybody -- who were protesting and stopping him from
17 speaking. And again, you know, I look at that and I
18 just say where do you get that from. This man has come
19 from, he is a very important economist. He has taken
20 the time to come to Binghamton University. He's a
21 pretty important speaker. Why would you ever think that
22 this was an appropriate way to respond to a speaker who
23 has come to your campus. Grabbing a bullhorn, standing
24 on a chair and yelling at him. If you have that level
25 of intensity about causing a disruption, I think the

1 word unteachable is probably assignable to at least that
2 person who did, who took that action because it's
3 inexplicable why you would have done that.

4 Q As the president of the university did you feel
5 that you had any obligation to attempt to teach those
6 who you had determined were unteachable?

7 A They were arrested.

8 Q Who is they in your statement?

9 A The two students at the Laffer event that were
10 arrested.

11 Q So were those?

12 A The two people, I'm sorry, two people because I
13 don't know if they were both students.

14 Q And therefore those two people who were
15 arrested, those were the ones who you were referred to
16 as unteachable, whereas the remainder of the audience at
17 the event and the participants in the tabling event they
18 are all teachable?

19 A I didn't say that.

20 MR. MOORE: Objection to form.

21 Q Help me understand what the reaction is to --
22 strike that.

23 A I said that those two were unteachable. I
24 didn't say everyone that was there was unteachable. Why
25 do you align --

1 MR. MOORE: There is no question pending.

2 Wait for a question.

3 Q The question is putting aside the two persons
4 arrested, were the others teachable at the Laffer event?

5 A I didn't make a comment.

6 MR. MOORE: Objection.

7 Q It's a question, President Stenger. I'm not
8 making an assertion. I'm asking a question. Listen to
9 the question. Answer the question.

10 MR. MOORE: What others?

11 Q The other persons who interfered with Dr.
12 Laffer's attempts to speak, were they teachable?

13 MR. MOORE: Objection. What others
14 interfered with his attempts to speak?

15 A You have to identify the students or the
16 people, but I would say that is uncertain. That's
17 uncertain.

18 MR. HRUSKA: Let's move on. And I want to
19 go to the next tab which is tab five which I'll
20 mark HS --

21 MR. MOORE: This one has been marked
22 before.

23 MR. HRUSKA: Okay. Apologies.

24 MR. MOORE: Do you know which one this was?

25 MR. HAYDEN: It was marked as Brian's, but

1 it was unredacted.

2 MR. MOORE: No. No. His was, I believe
3 Brian's was redacted as well. It definitely was
4 on the list.

5 MR. HRUSKA: Well, let's do this. I'm
6 going to mark it as temporary Exhibit HS-A and we
7 will go back and redesignate it.

8 MR. MOORE: I'll try to find it.

9 Q It's a document that is two pages and bates
10 stamped 263 to 264. And I apologize for the quality of
11 the printing, but it's how it was produced to us. At
12 the top of the document is an e-mail from you to Darcy
13 Fauci dated Wednesday, November 20th at 6:22 p.m. Do
14 you recognize this document?

15 A Yes.

16 Q You do?

17 A Yes.

18 Q You see at the bottom of the document there's
19 an e-mail from Mr. Gallagher to Mr. Pelletier. Do you
20 know who Mr. Gallagher is?

21 A He is an investigator of the New York State
22 University Police.

23 Q Is he somebody who you know from your contact
24 with the University Police Department?

25 A I could not identify him. I know his name, but

1 I could not identify him.

2 Q And you'll see that in his message there's, and
3 it's been redacted by Mr. Moore, but there is a list of
4 names, something called B number, date of birth and
5 classification of charges, do you see that?

6 A Yes.

7 Q Do you understand that that is a list of
8 individuals and potential criminal charges against them?

9 A Yes.

10 Q And if you go one step up in the e-mail it's an
11 e-mail from, the document is an e-mail from Mr.
12 Pelletier to a group of university officials and he
13 states "the top two will be arrested. The next six we
14 can discuss, student conduct only or arrest only. These
15 are positive 100% identifications. We have a few more
16 we are trying to 100% ID. The DA's office is aware and
17 supportive of the charge." Do you see that?

18 A Yes.

19 Q It's not clear from this e-mail chain exactly
20 how this was communicated to you such that you have this
21 e-mail to send to Miss Fauci, but it appears that you
22 did receive it at some point. Do you recall receiving
23 this information?

24 A No.

25 Q If you look at the top e-mail where you write

1 "I talked to Brian a few minutes ago." Do you know who
2 you meant by Brian?

3 A Brian Rose.

4 Q You write that "I think he is taking a good
5 approach on building strong cases against these students
6 before calling them to a hearing. Timing is important
7 since there will be some martyrs as a result of
8 sanctions. He has decided not to charge" -- sorry, I
9 misread that. "He has decided not to charge the
10 students who tore down the tables and I accept his
11 reasoning." Do you recall having a conversation with
12 Brian Rose along the lines of this subject at that time?

13 A I'm still traveling. I was in California. I
14 had a phone call with Brian and he told me his reasons
15 for not charging the students who tore down the tables
16 and I accepted it, yes.

17 Q What did Mr. Rose explain was his reason for
18 not charging the students who tore down the tables?

19 A I don't remember.

20 Q Do you remember anything about that
21 conversation with greater specificity than what you just
22 testified?

23 A I don't remember.

24 Q Do you remember coming to your own view about
25 the appropriateness of a decision not to charge any of

1 the students who had torn down the tables in the tabling
2 event?

3 A I probably thought it wasn't the right idea,
4 the right thing to do.

5 Q Why not?

6 A Because I thought that what they had done was,
7 was inappropriate. I thought the way that the students
8 had acted, the people who were protesting the tables was
9 certainly not the way I would want our students to
10 interact. Whether or not that confrontation was
11 chargeable under our student code of conduct, I'm not
12 the expert on that. It's really up to Brian to make
13 that decision and the office of student conduct. But I
14 felt that something should be done to those students
15 because I thought what they did was wrong. But Brian
16 looked at it and said that he felt there wasn't cases to
17 be charging against them.

18 Q What in your view would require a student
19 conduct offense to be charged with respect to student
20 activity that violates other students First Amendment
21 rights?

22 MR. MOORE: Objection. Are you asking for
23 a hypothetical?

24 Q I'm asking for, if you can answer the question,
25 answer the question.

1 A I forgot the question.

2 Q What is your approach to determining whether or
3 not specific student actions merit a student conduct
4 disciplinary charge?

5 MR. MOORE: Objection. I don't think he
6 testified that it was his decision ever.

7 Q That's not the question. The question is what
8 is your approach to addressing the question?

9 A To delegate it.

10 Q Is it entirely to delegate, you formed no
11 independent view on that subject?

12 A I can have an independent view, but I delegate
13 the authority to the vice president.

14 Q I haven't asked about the delegation. I'm
15 asking about your view. In your view how do you
16 approach the question of whether specific student
17 activity merits student, merits discipline for student
18 conduct?

19 A In general?

20 Q Yes.

21 A That they violate the code of student conduct.

22 Q But I think you've testified there are
23 instances in which the provision of the student conduct
24 code has been violated and yet your view is that there
25 should not be student discipline, is that a fair summary

1 of your testimony?

2 MR. MOORE: Objection.

3 A I think I said the opposite.

4 Q So your testimony is that any time there is any
5 violation of the rules of student conduct there should
6 be discipline imposed by the university?

7 A They should follow the conduct process by the
8 university.

9 Q What I'm asking is whether that process should
10 result in the imposition of disciplinary measures and
11 not, I understand that you are not involved directly in
12 that process. The question is what is your view as
13 president of the university as to when discipline should
14 be imposed?

15 MR. MOORE: Objection to form.

16 A If the process is followed properly and the
17 process results in a sanction, which is what we call
18 discipline, then there is an appeal process. And if
19 everything has been taken through the right process, I
20 am completely satisfied with that outcome.

21 Q So you have no view as to the substance of the
22 conduct at issue on whether that conduct merits a
23 sanction independent of the process that is followed to
24 achieve a decision?

25 MR. MOORE: Objection to form.

1 A I am not the person who oversees student
2 conduct process and rules. That's Brian's
3 responsibility. So I can have an opinion on it. I can
4 say what these students did was bad, but I cannot judge
5 them and I cannot provide sanctions to them, nor should
6 I because the process of student conduct involves many
7 steps that requires peer review and hearings. So I
8 cannot overstep that process. That would be like the
9 mayor making a decision for a judge. It's just uncalled
10 for.

11 Q Looking at this exhibit temporarily marked
12 HS-A.

13 MR. MOORE: To that end, I don't find that
14 this particular, I know this chain has been
15 marked as several other exhibits. I'm not sure
16 that this was marked. Let's call it HS-5.

17 (EXHIBIT HS-5 WAS MARKED FOR
18 IDENTIFICATION.)

19 MR. MOORE: And I'll follow up with a
20 request for marked copies.

21 MR. HRUSKA: We'll make sure it gets to
22 you. I don't want any confusion about the
23 documents.

24 Q If you understand do you know which incident
25 Investigator Gallagher is referring to in his e-mail at

1 the bottom here, whether that's the tabling incident or
2 whether it's with respect to the Laffer incident?

3 A I don't think you can tell from the e-mail, the
4 text in the e-mail, but I'm pretty sure that it is the
5 Laffer event.

6 Q Did you and Brian Rose speak about potential
7 student conduct and discipline with respect to the
8 Laffer event, also?

9 A I don't remember.

10 Q At some point you did however, correct?

11 A On the Laffer event?

12 Q Yeah.

13 A Did we speak about student conduct charges for
14 the Laffer event? I'm sure we did. I'm sure we did.

15 MR. HRUSKA: So actually let's turn to the
16 next document which I'll label HS-6. It's a
17 bates number 177. It's a one-page document
18 e-mail exchange between Harvey Stenger and
19 Mitchell Goldstein. It's dated Wednesday,
20 November 20th.

21 (EXHIBIT HS-6 WAS MARKED FOR
22 IDENTIFICATION.)

23 Q Do you recognize that document?

24 A Yes.

25 MR. MOORE: Did you say this is bates

1 stamped 177?

2 MR. HRUSKA: Yes. Tom, it's tab six.

3 MR. SAITTA: Thanks.

4 Q Who is Mitchell Goldstein?

5 A He is an alumnus and a member of our foundation
6 board of directors.

7 Q And do you remember telling him what is written
8 in this e-mail from you "we are continuing to review
9 tapes and hold interviews to bring student conduct
10 charges. Justice is something that can't be served
11 overnight, but we will get to the bottom of this and
12 hold people accountable." Do you recall that?

13 A I said it right there.

14 Q Do you recall saying it?

15 A I see it right now, so I'm now recalling it.

16 Q What did you mean when you said "we'll get to
17 the bottom of this"?

18 A What are we referring to here?

19 Q That's my question to you.

20 A I don't think it's clear whether we are
21 referring to Laffer or to the, or the protester, the
22 tabling event. Is it clear?

23 Q It appears as though you have corresponded with
24 Mr. Goldstein about a video of the Laffer event and the
25 subject is VIDEO: Protesters disrupt Arthur Laffer

1 presentation at Binghamton U. Does that refresh your
2 recollection?

3 A Partially, yes. But remember there's two
4 events. Both were videoed, there were videos of both.
5 And they were kind of a common tie. So if somebody
6 would be writing about a video about an event, he could
7 have been referring to the tabling event, he could have
8 been referring to the Laffer event. I think he is
9 referring to the Laffer event because he attaches the
10 connection to that press story. But again I'm
11 responding to a lot of e-mails at this point in time.
12 And I could in my mind easily have thought that I was
13 looking at the tabling events or at the Laffer event.
14 So I'm not sure which one, but let's assume it was the
15 Laffer event. There was some video taken of the Laffer
16 event. And this was on, this was on Wednesday so it had
17 just taken place a day and a half before this. So I was
18 anticipating, while I was traveling I was anticipating
19 that police, student conduct would be looking at those
20 tapes which were tapes that were made by us because it's
21 the tape, it's the video system in the classroom that we
22 would be looking at them to see if there should be
23 student conduct charges against any of the students that
24 were involved in them. That's what I was saying.

25 Q And what did you mean by the phrase "hold

1 people accountable"?

2 A If we found somebody had broken the code of
3 conduct that we would hold them accountable meaning that
4 we would take them through the student conduct process
5 and let the student conduct process determine what
6 action should be taken.

7 Q Is it possible that there is a circumstance
8 where a student is arrested and charged with a crime
9 under New York Penal Law, but he is not guilty of
10 violating a student conduct rule and therefore
11 appropriately sanctioned?

12 A It is possible to be arrested for a violation,
13 a criminal violation and it not be charged as a student
14 conduct, but it's unlikely. It's unlikely. I'm trying
15 to think of one that might be that.

16 Q Assuming for the sake of argument that it's
17 something, it's conduct by a student, actions by a
18 student that occur on campus.

19 A Right. Right. So I'm thinking a student
20 throws a rock through a window or a student gets
21 arrested for a DWI or they are caught with alcohol and
22 they are underage, all those would be an offense that is
23 arrestable and criminal, but they are also all of them
24 are student conduct violations as well. They follow
25 completely different processes. They even have

1 different standards of whether or not they are a
2 violation. One says you have to have absolute evidence
3 and one says propensity. You're probably familiar with
4 that. But I can't, I can think of ones where a student
5 is not arrested, but brought up on student conduct
6 charges. But I can't think of one where they violated,
7 where if they are arrested, they probably did something
8 against the code of conduct. It's not, they are
9 separate though. They are completely separate.

10 Q I understand that they are separate processes,
11 but I want to fairly characterize or summarize your
12 testimony which is that you cannot think of an instance
13 in which an arrest for an action that a student took on
14 campus would not also be a violation of student conduct
15 rules?

16 A Correct. Now when that happens, and that does
17 happen, that there is an arrest and a student conduct
18 charge we hold the student conduct case until the arrest
19 court procedure is completed because we don't want the
20 student conduct case to create evidence and testimony
21 that influences the court case. So it's the timing of
22 the two that would be distinct here. That the students
23 who were arrested would want, we would want them to go
24 through their arrest process, court process before we
25 would charge them with student conduct charges.

1 Q In that circumstance does the university
2 continue to collect information upon which it could base
3 student conduct charges following the resolution of the
4 criminal process?

5 A Yes. Yes.

6 Q So the work continues, the work of
7 investigating the incident doesn't wait until the
8 conclusion of the criminal process, correct?

9 A Correct. Right. There is evidence that is
10 gathered and evaluated.

11 Q And who in the university, what university
12 employee is responsible for keeping track of the
13 criminal process with respect to a student for whom the
14 university may wish to bring student conduct charges?

15 A It would be a combination. It could be
16 university counsel or it could be the police, the
17 university police department. Those would be the two
18 that would have appropriate access to the court.

19 Q And in any given instance how does the
20 university determine which employee will be charged with
21 that responsibility, the police or university counsel or
22 both?

23 A Well, it depends on who is in place. Right now
24 Kevin is our counsel and Kevin might take that role. I
25 would let them decide. I would let the chief of police

1 and counsel make that decision who wants to contact him.
2 And it's probably mostly going to be the police
3 department that's going to contact him.

4 Q But in whichever case is it your understanding
5 that some university employee is responsible for keeping
6 track of the criminal process and reporting back to
7 others within the university with the results of that
8 process, correct?

9 A Correct.

10 MR. HRUSKA: All right. So flip ahead a
11 little bit. All right. I want to move forward a
12 day in time to tab number nine.

13 MR. SAITTA: Thank you.

14 MR. HRUSKA: Which is a document that, has
15 this been marked yet? I don't think so.

16 MR. MOORE: I think it has. I believe this
17 was part of the Rose record.

18 MR. HRUSKA: I will temporarily mark it

19 HS-A. It's a document --

20 MR. MOORE: Maybe it wasn't.

21 MS. KURLUK: I don't have it.

22 MR. HRUSKA: Withdrawn. I will mark it

23 HS-7. It's a document bearing sequential bates
24 numbers 273 through 283. And at the top there is
25 an e-mail from Sheila Doyle to a large group

1 dated Thursday, November 21st, 2019 and one of
2 the recipients is President Stenger.

3 (EXHIBIT HS-7 WAS MARKED FOR
4 IDENTIFICATION.)

5 Q Do you recognize this document or need time to
6 read through it?

7 A I recognize it now. I do not recall it, but
8 I've read it.

9 Q Do you recognize it from a time other than the
10 immediate preparation for this deposition?

11 A No.

12 Q Do you recall that there was a process in the
13 week following the Laffer event to collect information
14 that is contained in this document?

15 A It appears that there was a process in place to
16 prepare this document as kind of a chronology of what
17 happened from our perspective.

18 Q Do you recognize the group to whom this e-mail
19 is directed as being one composed of university
20 employees collected for a specific function?

21 A The majority of these are foundation board
22 members. There's a few staff members on here, Rebecca
23 Benner, Sheila Doyle and everybody else, and John Cook.
24 Everybody else is a member of the foundation board.

25 Q So they are not employees?

1 A No.

2 Q They are outside?

3 A Correct.

4 Q And do you understand what the purpose was for
5 Miss Doyle to send this information to them at this
6 point?

7 A This is a very important group of people. They
8 are, they volunteer a significant amount of their time
9 to help the university, mostly financially. And when
10 things happen on campus, we try to communicate with them
11 as quickly as possible with as much information as
12 possible so that they know what they are hearing through
13 other channels is better, better delivered to them
14 through our lens and our thoughts. So it's a way for us
15 to summarize everything that happened for them.

16 Q Do you know what the process was to compile
17 this information?

18 A I don't.

19 Q The first, if you turn the page to the page
20 marked 274, the summary and overview of campus
21 demonstration of November 18, 2019. In the background
22 section the authors refer to an organization called
23 Progressive Leaders Of Tomorrow, PLOT. Is that an
24 organization that you're familiar with?

25 A I've heard of them.

1 Q In what context?

2 A That their name is PLOT and that it stands for
3 Progressive Leaders Of Tomorrow. That's really all I
4 know.

5 Q Do you know anything about the composition of
6 the organization?

7 A No.

8 Q Do you know anything about the role that they
9 may have played in the events of November 18, 2019?

10 A No.

11 Q Do you know why the authors of this document
12 have chosen to focus on them in the introduction?

13 A I don't know.

14 Q Do you recall any discussion of the role of
15 PLOT in the events of November 2019 among your executive
16 group at the university following those events that
17 week?

18 A Nope. No, I do not recall us talking about
19 PLOT. In fact this is the first time it sort of appears
20 I think in any description of what happened there.
21 Literally what is PLOT. It's perhaps a group of people,
22 but it really is just the words PLOT and the name. I do
23 not know if it has an official not-for-profit
24 corporation status or that it is a membership club that
25 has been formed in some way or it's just perhaps a term

1 that people use to represent a group of people that may
2 not even be identifiable. I think if you looked up and
3 tried to find who is in PLOT, I don't know if you would
4 find it. I don't really know.

5 MR. MOORE: Wait for a question.

6 Q Do you know if any university employees are
7 members of PLOT?

8 A I don't know any members.

9 Q Have you had a chance to review this document?

10 A Yes.

11 Q Because I would like to ask you about some
12 specific passages and whether that squares with your
13 understanding of events. If you look down at the bottom
14 of the page marked 274 at the bottom, the one we've just
15 been looking at, there's a heading that says university
16 preparation. And that discusses what is described as
17 the plan of action that the university developed and
18 undertook. And there's a series of seven points that
19 follow that and flow onto the next page. Do you see
20 where I'm referencing?

21 A Yes.

22 Q So I'm not going to ask you about all of them,
23 but there are a couple of them that I want to draw your
24 attention to see what your understanding is. Number
25 three on that point, on that list of points it says "the

1 university secured an adjacent lecture hall of similar
2 size in the same building that the Laffer talk would be
3 held (nearly adjacent) and the availability of this
4 space for a counter-demonstration was communicated to
5 the College Progressives so that they would have an
6 opportunity to express their perspective on Laffer's
7 ideas." And then in brackets it says "[No one chose to
8 use this adjacent space.]" Are you familiar with the
9 activity that this point discusses?

10 A I have heard about it, yes.

11 Q What had you heard?

12 A That it, that we reserved a classroom next to
13 or near the classroom where the Laffer event was going
14 to be held.

15 Q Were you also aware that the space was not
16 actually used for the purpose that it was designated?

17 A Again I was traveling at the time. And whether
18 or not it was used might have been the subject of
19 conversation, but I don't recall.

20 Q I realize you were traveling at the time and
21 your communication at the time was limited, but this
22 document was prepared several days later. My question
23 is whether in the interval around the preparation of
24 this document you had learned about the facts that
25 support the statement that no one chose to use this

1 adjacent space?

2 MR. MOORE: Asked and answered, but you can
3 answer.

4 A I didn't know if the space had been used or
5 not. I'm seeing it now and there probably might have
6 been a conversation where somebody had said to me that
7 the space wasn't used, but I don't recall.

8 Q Don't speculate. Just asking.

9 A Well, it sounds like you want me to speculate.
10 Your questions tend to lead me to speculate.

11 Q I don't want to curtail your answers, President
12 Stenger, I just want your recollection. And if you
13 think that my question is calling for speculation, then
14 please be advised it's really not. I only want your
15 best recollection.

16 MR. MOORE: If you don't recall, you can
17 say you don't recall.

18 A I'm just trying to be helpful.

19 MR. MOORE: Don't be helpful. If you don't
20 recall, you don't recall.

21 MR. HRUSKA: What's most helpful is just to
22 give us your best recollection.

23 MR. MOORE: He wants to know what you know.
24 Not your speculation. So if you don't know or
25 don't recall, it's certainly fair to say that.

1 He'll follow up if he needs to.

2 A Okay. I'll do the best I can.

3 Q Point five says "university staff and police
4 met with the College Republicans as event sponsors to
5 review a plan to attempt to manage disruption by
6 communicating to attendees that they were expected to
7 respect Laffer's presentation and hold questions and
8 comments until after his talk." Do you recall
9 discussion of that issue specifically in the time
10 between the Laffer event and the preparation of this
11 event?

12 A No, I don't remember that.

13 Q Do you know whether or not there was a
14 communication to attendees of the event that they were
15 expected to respect the presentation and hold questions?

16 A I do not remember that.

17 Q Point seven, "we contacted faculty governance
18 to explore the possibility of a faculty member(s)
19 introducing the talk to try and set a respectful tone,
20 but the evolving intensity of demonstration led faculty
21 governance leaders to conclude they could not be
22 effective in that capacity." When you received this
23 document did you understand who the faculty governance
24 leaders were?

25 A I don't recognize this document.

1 Q Separate from this document, what does the
2 phrase faculty governance leaders mean to you in the
3 context of the university?

4 A There is a group of faculty who we call the
5 governance leaders.

6 Q And who are they?

7 A They are the president or chair, president of
8 the faculty senate, the president or chair of the
9 faculty senate executive committee, the two faculty
10 campus representatives to SUNY, a faculty senate and one
11 more who is I think the vice president of the faculty
12 senate. So I think it's five people. We call them the
13 campus governance leaders, but they are really the
14 faculty governance leaders.

15 Q And what persons occupy those positions at this
16 time, November 2019?

17 A I don't remember.

18 Q None of them, you don't remember a single one
19 of them?

20 A I don't remember them, no.

21 Q Who are they now? Who are those people in
22 position now?

23 A Now, Natalia Malocavik (phonetic), Jonathan
24 Krazno (phonetic), Melissa Zenkin, Sarah Rider and Barry
25 Jones. I think that's it.

1 Q Do those positions change frequently such that
2 you would expect it would have been a different set of
3 people several years ago?

4 A Every two years.

5 Q If you had to check what documents would you
6 refer to to figure out the answer to the question was in
7 2019?

8 A I would look at the faculty senate website.

9 Q Which would list historical occupants of those
10 positions?

11 A I don't know, but that's where I would look.

12 Q And if you had to confirm that quickly by
13 asking another university employee, who would you ask?

14 A I would ask the person who manages their
15 meetings. There's a secretary assigned to manage their
16 meetings.

17 Q What's the name of that person?

18 A Currently it's, what's her last name?
19 Havanchik (phonetic). First name is Kelly Havanchik,
20 but it wasn't the same then.

21 Q I presume you don't recall who it was, the name
22 of the person then; is that correct?

23 A I'm thinking. I don't remember. I could
24 guess, but I don't remember.

25 MR. MOORE: Don't guess.

1 Q All right. Flipping to the next page, page
2 276. Under the heading immediate aftermath it says that
3 "administrative staff and law enforcement gathered at
4 university police headquarters to discuss the incident,
5 develop a statement for the campus and media inquiries
6 (see attached) and to consider further response."
7 President Stenger, were you involved in that discussion
8 remotely at the time? Did anyone communicate with you
9 from that meeting since I understand you were not
10 physically on campus then?

11 A I don't remember.

12 Q Continuing. It says "at this time we are
13 taking the following actions and approach:" and it
14 lists a series of bullet points. Were you consulted
15 about this list of actions?

16 A I don't remember.

17 Q Were you consulted at any point about this list
18 of actions even after they were announced?

19 A I don't remember.

20 Q Your testimony is as the president of the
21 university you don't remember whether or not you were
22 consulted about this series of actions?

23 A This document.

24 Q No, no, not the document.

25 A Oh, I thought you were referring to this

1 document.

2 Q No. The actions that the document describes.
3 I realize you've already testified about the document.
4 I'm asking about the substance.

5 A Well, let's go through them.

6 Q Okay. Number one, it says "through video,
7 personal knowledge and observation we are identifying
8 demonstrators who actively disrupted the event, incited
9 other to disrupt the event and/or interfered with the
10 police."

11 A Yes.

12 Q Yes what?

13 A We were doing that.

14 Q Who was doing that?

15 A I believe, I don't know who was doing that.

16 Q Was it the university police?

17 A I can't speculate.

18 Q How do you know that somebody was doing it
19 then?

20 A It seems like a logical thing that we should
21 have done.

22 Q It does indeed, but did somebody tell you that
23 it was in fact being done?

24 A I don't remember.

25 Q So what is your source of assurance that it was

1 being done?

2 A That it sort of makes sense that it was being
3 done.

4 MR. MOORE: Don't guess. Do you remember
5 someone telling you this was done?

6 A No.

7 MR. MOORE: Okay. That's the answer.

8 Q So the answer is you don't know?

9 A I don't know. I don't remember. Right. I
10 don't remember. I don't know.

11 Q Second point, "through social media monitoring
12 we are identifying students and organizations who
13 incited the demonstration or otherwise encouraged
14 violation of the law/university policy." Do you know if
15 that was being done?

16 MR. MOORE: If you know.

17 A I don't know how to answer it.

18 Q Did somebody tell you that was being done?

19 A I don't remember.

20 Q Did you witness somebody doing that activity,
21 monitoring social media for that purpose?

22 A No.

23 Q Were you informed of the result of any media,
24 of any social media monitoring for that purpose?

25 A I don't remember.

1 Q I'd like to turn to the final pages of this
2 document, four pages starting at 280. And there is a
3 heading near the bottom of that page. It says e-mail
4 from College Progressives, November 16th, 2019 so two
5 days before the Laffer event. Are you familiar with
6 this portion of the document, President Stenger?

7 A I'm seeing it right now for the first time.

8 Q All right. I will not further ask you about
9 the contents, but I will ask you did anybody within the
10 university administration refer to a message that had
11 come from the College Progressives concerning the Laffer
12 event in advance of the event?

13 A I don't remember.

14 Q You remember no discussion of that topic, a
15 message from College Progressives concerning the
16 upcoming Laffer event?

17 A I don't remember.

18 MR. MOORE: Asked and answered.

19 MR. HRUSKA: Turning now to tab ten. This
20 is a document that I will mark HS-8. The top of
21 the e-mail is from Harvey Stenger to Brian Rose
22 and Darcy Fauci, bates numbered 496 to 497.

23 (EXHIBIT HS-8 WAS MARKED FOR
24 IDENTIFICATION.)

25 Q Take a look at this and see if you recognize

1 that, President Stenger. Do you recognize this
2 document?

3 A Do I recognize it? Uh huh.

4 Q That's the question. Do you recognize the
5 document?

6 MR. MOORE: Are you asking if he recalls
7 this document?

8 Q Yes. Do you recall this document?

9 A No.

10 Q Do you recall that there were many
11 communications coming from people associated with
12 Binghamton either as graduates or parents or students
13 expressing their concern about the way the university
14 was handling the Laffer event and its aftermath coming
15 in the several days following the event?

16 A Yes.

17 Q Did you adopt a policy on the manner of
18 responding or not responding to those communications?

19 A When things like this happen I try to respond
20 to everybody who writes to me, but when it gets to a
21 certain volume I can't keep up with it. And in this
22 case I was at the point where I couldn't keep up with it
23 and so we were not going to, I was not going to
24 personally respond.

25 Q Just because of too much communication?

1 A Couldn't keep up with it.

2 Q Too much time?

3 A Too much time.

4 Q And that was independent of the substance of
5 the communication, it was merely a volume consideration;
6 is that your testimony?

7 A Well, if it was from somebody that I don't
8 know, even a parent it would have a lower priority than
9 an alum on the foundation board. So yeah, some would
10 get responses if I knew them, if they were personally, I
11 was personally aware of what their concerns might be.
12 But if it was just a general complaint, I couldn't, I
13 didn't have time to respond to this.

14 MR. HRUSKA: HS-9 is a very brief e-mail
15 and it bears the bates number 206 from Kristina
16 Johnson to Harvey Stenger and the subject line is
17 "are you thinking about an apology to Laffer?"
18 It's dated Friday, November 22nd, 2019 and the
19 full text of the e-mail is "might be a good thing
20 to do" and a series of ellipses points.

21 (EXHIBIT HS-9 WAS MARKED FOR
22 IDENTIFICATION.)

23 Q Do you recall this communication, President
24 Stenger?

25 A I see it now, but I don't remember it.

1 Q And does Miss Johnson typically communicate
2 with you from her personal e-mail address
3 kmj117@gmail.com?

4 A I don't remember.

5 Q Do you recall her ever communicating with you
6 from that e-mail address?

7 MR. MOORE: Other than this e-mail?

8 MR. HRUSKA: No, at all because he said he
9 doesn't remember the e-mail.

10 A No.

11 Q Do you have any doubt that this is an e-mail
12 from the same Kristina Johnson who was the chancellor of
13 the State University system at the time?

14 A I have no reason to believe that it is not
15 Kristina Johnson.

16 Q Do you recall discussing whether in print or
17 orally with her the concept of making apologies to Dr.
18 Laffer for the events of November 18?

19 A No, I don't remember.

20 Q Did you consider making an apology to Dr.
21 Laffer for those events?

22 A Yes.

23 Q What was your consideration?

24 A That I should apologize to him.

25 Q And did you do so?

1 A I don't remember.

2 Q What did you weigh in your mind as you
3 considered whether or not to make an apology?

4 A Well, I said I think I should make an apology.

5 Q Why did you think you should make an apology?

6 A Because I didn't think he was treated very
7 nicely when he came to our campus.

8 Q If you had made an apology, do you think he
9 would recall it?

10 A No. It was three years ago. I write a lot of
11 letters.

12 Q Have you ever spoken with Dr. Laffer to your
13 recollection on any topic at any time?

14 A No.

15 Q If you had done so, if you had made an apology
16 do you think it would have been written as opposed to
17 oral as a matter of practice?

18 A I've never had to apologize to somebody for
19 something like this so I don't know. If I had to
20 speculate.

21 Q No, don't speculate.

22 A Then I can't answer.

23 Q I thought you might have a practice that you
24 adhere to and therefore you could testify as matter of
25 habit, but I guess that is not the case.

1 A There are no habits that are associated with
2 this kind of event.

3 MR. HRUSKA: Why don't we break now.

4 (OFF-THE-RECORD DISCUSSION.)

5 MR. MOORE: Under the federal rules of
6 civil procedure we are suppose to advise you that
7 we want the witness to have the opportunity to
8 review and inspect the transcript so I'm making
9 that request.

10 MR. HRUSKA: Okay.

11 (RECESS TAKEN.)

12 Q Before we broke, President Stenger, we were
13 discussing the events in the week following the Laffer
14 event and the documents we were reviewing show that
15 there is a great deal of focus on discovering what
16 happened at the event and determining how to respond to
17 it. What's your role generally speaking in that
18 process?

19 MR. MOORE: Objection. Do you understand
20 what process he is referring to?

21 Q The process of determining what happened at the
22 event and how to respond to it on behalf of the
23 University.

24 A Responding to it through communications?

25 Q Through any means.

1 A Yes.

2 Q What's your role? I don't want to presume. I
3 see you copied on many, many messages and if I
4 understood your role better, it will help us focus on
5 what role you actually played here and what you know and
6 therefore what we should get on the record.

7 A Is there a specific process that you're asking
8 was I involved in?

9 Q I'll just ask you questions about the
10 documents, but I was hoping to get some direction as to
11 where to focus. Let's take a look at tab 14 in the
12 binder which has been previously marked as RY-6. It's a
13 document that bears the bates numbers 565 through 567.
14 And at the top there's an e-mail from Brian Rose to
15 Harvey Stenger and others on Friday, November 22nd,
16 2019. The e-mail attaches a document beginning at 566
17 that is entitled "Laffer and tabling incidents,
18 follow-up issue list November 22nd, 2019." Do you
19 recall this communication, President Stenger?

20 A I don't recall the specific communication.

21 Q Do you recall the process that created
22 communications of this sort at this time period during
23 the week following the Laffer event?

24 A I don't recall.

25 Q Do you recall being asked for your advice with

1 respect to communication issues in the week immediately
2 following the Laffer event?

3 A I don't recall.

4 Q When did you return from your trip to out of
5 state back to Binghamton?

6 A Near the end of that week.

7 Q Did you upon your return become involved in
8 meetings in which university officials discussed the
9 proper response to those events?

10 A I don't remember.

11 Q I'm talking about in the immediate aftermath
12 during the week following the Laffer event.

13 A No, I don't remember.

14 Q I'm going to direct your attention to the
15 attachment to that document because there is some
16 specific statements in there that I want to see whether
17 in the absence of recollection of the specific document
18 you nonetheless are familiar with the concepts they
19 refer to. Starting at Point B, which is labeled
20 SA/status of BU Progressives. The statement in the
21 first sentence is "the BU Progressive communication
22 calling upon student members of certain cultural groups
23 to shut down the Laffer talk is a "smoking gun" as to
24 the role the organization played in inciting the
25 violations of law/policy that occurred at the Laffer

1 event." Do you understand that statement in context?

2 A Yes.

3 Q Do you agree with that statement?

4 A I don't have an opinion.

5 Q Do you understand what the source of that
6 statement is, the BU Progressive communication that it
7 refers to?

8 MR. SAITTA: Object to form.

9 A I believe it was written by Brian Rose
10 according to the e-mail.

11 Q This document that we're looking at right now
12 that is Exhibit RY-6 you're referring to, that's what
13 you're saying was written by Brian Rose?

14 A That is what it says in this e-mail.

15 MR. MOORE: And, Andrew, I know you weren't
16 here, I'm not trying to interrupt you, but I
17 believe Brian Rose testified he prepared this.

18 MR. HRUSKA: I know that and I've reviewed
19 his testimony. I want President Stenger's
20 testimony.

21 Q I'm not asking about the authorship of the
22 document. I'm asking about the concept the document
23 reflects and whether you understand what Mr. Rose was
24 referring to when he wrote "the BU Progressive
25 communication." Do you understand what that is?

1 A What the BU Progressive communication is?

2 Q Uh huh.

3 A I think we've seen it in here somewhere.

4 Q Thank you. And do you think that Mr. Rose was
5 correct in referring to it as a smoking gun as to the
6 role that the organization played?

7 A I don't have an opinion.

8 Q Did you discuss that issue with Mr. Rose at
9 that time?

10 A I don't remember.

11 Q Did you think it was correct of Mr. Rose to
12 attribute that communication to the BU Progressives?

13 A I don't have an opinion.

14 Q Did you have any communication with Mr. Rose
15 concerning the status of the BU Progressives with
16 respect to their activity with relation to the Laffer
17 event?

18 MR. MOORE: Other than this document?

19 MR. HRUSKA: Well, he hasn't testified that
20 he had any discussions. That's what I'm asking.

21 A I don't remember. I don't remember.

22 Q Mr. Rose says "it will be difficult for the SA
23 to avoid considering action against the BUPs having
24 taken action against the CPs," by which he must mean
25 parenthetically to College Republicans, not the College

1 Progressives, "for a violation of a reservation policy."
2 So that sentence appears to refer to consideration of
3 action against the Binghamton University Progressives.
4 Do you recall any discussion of potential action against
5 the Binghamton University Progressives that took place
6 during this time period?

7 A Yes.

8 Q What was that discussion?

9 A It was in a meeting with the Student
10 Association executives, vice president and president.

11 Q Do you recall when that took place?

12 A No.

13 Q Do you recall roughly the sequence in which it
14 took place, was it after, I assume it was after the
15 Laffer event, correct?

16 A It was after the Laffer event, yes.

17 Q That's my question.

18 A Yes.

19 Q And who else took part in that discussion?

20 A I don't remember.

21 Q And what do you recall about the substance of
22 the discussion?

23 A That Brian was asking them what they were going
24 to do about the sanctions to Progressives versus College
25 Republicans and was their action balanced between the

1 two actions that they took.

2 Q And what was the response?

3 A I think that the Student Association said, they
4 did not make an answer. They did not answer him. They
5 said we would keep thinking about it.

6 Q Was that an acceptable response to you?

7 A Yeah. They are a separate independent
8 organization.

9 Q Just to be clear your testimony is that the
10 Student Association is a separate independent
11 organization from the University?

12 A Correct.

13 MR. MOORE: Asked and answered.

14 Q Where does the Student Association receive its
15 money from?

16 A Student fees.

17 Q Who collects those fees?

18 A State University, the State of New York.

19 Q Does the State of New York have the ability to
20 prevent the Student Association from receiving money
21 through the student fee collection?

22 A I don't know.

23 Q What influence does the university have over
24 the operations of the Student Association?

25 A Advisory.

1 Q So if the Student Association were to make a
2 decision with which you as the president disagreed,
3 would you have the power to reverse that decision?

4 A I don't believe so.

5 Q Moving further in the document there's a
6 heading C, right at the bottom, individual students
7 arrested/subject to arrest. It says "we have a meeting
8 scheduled for December 3rd to discuss what action should
9 be taken under either criminal statutes or rules of
10 conduct as to a list of ten students identified as
11 having disrupted the Laffer event and/or interfered with
12 police." So was there in fact a meeting that took place
13 on December 3rd to discuss those topics as far as you
14 recall?

15 A I don't remember.

16 Q Do you remember taking place -- strike that.
17 Do you remember taking part in a meeting on those topics
18 which included Mr. Rose roughly in this time period,
19 late November, early December?

20 A I don't remember.

21 Q Do you remember learning that such a meeting
22 during which those topics were considered had taken
23 place?

24 A I don't remember.

25 Q Do you recall that the question of whether to

1 advance criminal charges against a group of students
2 following the Laffer event was under consideration by
3 university officials during this time period?

4 A Yes.

5 Q What do you remember about that?

6 A That there was consideration about taking
7 action against those students.

8 Q Criminal action?

9 A Criminal action.

10 Q And who was involved in that consideration?

11 A I don't remember.

12 Q Were you involved?

13 A Not directly.

14 Q Were you involved indirectly?

15 A Yes.

16 Q In what way?

17 A Most likely that my chief staff attended those
18 meetings.

19 Q Miss Fauci?

20 A Yes.

21 Q And in what way did she inform you about the
22 progress of that consideration?

23 A I don't remember.

24 Q And did you give her any opinions on the
25 progress of that consideration?

1 A I don't remember.

2 Q Did you give her any direction to convey
3 concerning the evaluation of those issues?

4 A I don't remember.

5 Q At this time this issue was the subject, as
6 you've previously testified, of a tremendous amount of
7 public attention in which you were directly involved.
8 Is that a fair summary of your testimony?

9 MR. MOORE: Objection. You can answer.

10 Q Do you understand the question?

11 A No.

12 Q At this time this issue was the subject of a
13 tremendous amount of public attention in which you were
14 directly involved through the contact that you were
15 receiving from many members of the community and even
16 beyond the community.

17 MR. MOORE: Objection to form. What do you
18 mean by this issue, the arrest or the Laffer
19 event?

20 MR. HRUSKA: The Laffer event.

21 A I don't understand the question. Can you
22 repeat the question?

23 Q Do you recall many people contacting you and
24 having many discussions concerning the Laffer event
25 during the weeks immediately succeeding the event?

1 A Yes, we talked about that.

2 Q You've testified about that at some length in
3 fact?

4 A Yes.

5 Q And yet you don't recall a discussion about the
6 evaluation of specific students on the question of
7 whether or not the university should support criminal
8 charges against them?

9 A I don't remember being involved in a
10 conversation about making criminal charges against the
11 students.

12 Q Nor do you remember being told that such a
13 conversation was occurring; is that your testimony?

14 A I don't remember.

15 Q You don't remember that. Just below the
16 portion that I just read it's written that "the arrest
17 or charging of additional students will likely trigger a
18 reaction from Progressives and allies who will likely
19 frame it as a police/administration hostility toward
20 students of color." Do you remember that concept being
21 discussed among university officials with respect to the
22 Laffer event during this time period?

23 A No. You want me to repeat that?

24 MR. MOORE: No, I got it. Wait for the
25 next question.

1 Q The final sentence there in that paragraph says
2 "failure to take action runs the risk of empowering
3 students to fail to follow directives of police in
4 future contexts." Do you remember a discussion of that
5 point among university officials during this time
6 period?

7 A No.

8 Q Do you remember talking to Mr. Pelletier, the
9 chief of university police, concerning the question of
10 whether failure to take action with respect to students
11 who had disrupted the Laffer event would run the risk of
12 empowering students to fail to follow directives of the
13 police in future contexts?

14 A No.

15 Q Do you remember discussing that topic with Mr.
16 Rose?

17 A No.

18 Q So if Mr. Rose believes that you did discuss
19 that topic, that's something completely outside of your
20 recollection?

21 A Correct.

22 Q You have no comment on that whatsoever based on
23 your memory?

24 MR. MOORE: Objection. Asked and answered.

25 A Correct.

1 Q On the next page Section D, event policies and
2 practice, the memo in the document state's "our existing
3 policies and practices on space use/reservation and
4 event management as they pertain to potentially
5 controversial programs and displays are not likely to
6 withstand the close scrutiny that comes with
7 controversy." Do you remember Mr. Rose discussing that
8 concern with you during the weeks immediately succeeding
9 the Laffer event?

10 A No.

11 Q Do you agree with the statement?

12 A I don't have an opinion.

13 Q Did you feel that there was any need to change
14 the space use/reservation and event management policies
15 following the Laffer event?

16 A I didn't have an opinion.

17 Q Do you know what these space use/reservation
18 and events management policies and practices were prior
19 the Laffer event?

20 A No.

21 Q Do you know if they have changed since?

22 A No.

23 MR. HRUSKA: All right. I'm skipping ahead
24 to tab 16 which is a document bearing sequential
25 bates numbers 319 through 339. And unless it's

1 been previously marked, I'm going to mark it
2 HS-10.

3 (EXHIBIT HS-10 WAS MARKED FOR
4 IDENTIFICATION.)

5 MR. MOORE: I believe a version of this has
6 been marked, but not this.

7 Q At the top of the document is an e-mail from
8 you to Dennis McCabe and Ryan Yarosh dated Wednesday,
9 November 27, 2019. Do you recognize this document?

10 A Yes.

11 Q What is it?

12 A It was a set of slides that Ryan Yarosh put
13 together to try to explain what happened.

14 Q During the November 2019 events that we've been
15 discussing, correct?

16 A Tabling events and the Laffer event, correct.

17 Q Did you review Mr. Yarosh's work at the time?

18 A I don't remember.

19 Q Who is Dennis McCabe?

20 A Dennis McCabe is a member of the university
21 council.

22 Q And what is that body, university council?

23 A It is a governor appointed body that is an
24 advisory group and advocacy group for the university,
25 for Binghamton University. Every SUNY campus has a

1 university council.

2 Q Is he a full-time employee or is this a
3 part-time responsibility?

4 A He is a volunteer.

5 Q And how many members of that council are there?

6 A Seven, six or seven.

7 Q And does that council have any formal power or
8 is it merely advisory?

9 A They have some power.

10 Q As you understand it what are their powers with
11 respect to your work?

12 A Their one distinct power is that annually we
13 review the student code of conduct and they approve any
14 changes to the student code of conduct.

15 Q And are there any other powers that they have
16 with respect to the university?

17 A I think one other one is they can approve the
18 naming of space on campus, an honorific naming of space
19 on campus. I think they also review our parking fee,
20 parking charges, but they don't have any
21 responsibilities. I think those are the three main
22 ones.

23 Q And then what is the range of topics on which
24 they advise the university as opposed to exercising some
25 direct power?

1 A We meet six times a year and at each meeting
2 there's presentations by the vice presidents and
3 executive directors on their area and their current
4 projects that are in place and accomplishments and they
5 listen and they provide feedback.

6 Q So it could be any matter that is presented to
7 them?

8 A Right.

9 Q Why were you sending this set of talking points
10 to Mr. McCabe at this point?

11 A I don't know.

12 Q I'd like to take a look at just a few of the
13 materials. There is a portion of that document, if you
14 advance to page 334 which is several pages in, which is
15 titled Binghamton University, State University of New
16 York, Office of Communications and Marketing, Talking
17 Points-November 2019 Incidents.

18 MR. MOORE: Can we specify that this e-mail
19 that we're talking about was sent on November 27,
20 2019?

21 MR. HRUSKA: I believe I did.

22 MR. MOORE: Okay. I wasn't sure if that
23 was in the record so I apologize.

24 Q Do you recall a set of talking points that
25 resembles this set of talking points that you are aware

1 of during this time period in late November, early
2 December of 2019?

3 A Yes.

4 Q Were you aware of this specific set of talking
5 points?

6 A I don't recall.

7 Q So I'm going to ask you some questions about
8 these talking points. And if you believe that other
9 talking points with which you were aware differed in
10 some material respect, tell me please. The statement in
11 the second paragraph of the text of that document --
12 well, actually let me back up and strike that. What do
13 you understand was the purpose of this set of talking
14 points?

15 A I don't know.

16 Q What was the purpose of having talking points
17 at all at this point in late November of 2019?

18 A We typically develop talking points that people
19 can read in case constituents call them. Like our
20 alumni office gets phone calls or our call center might
21 get phone calls or our foundation might get phone calls
22 and so talking points are distributed to all of those
23 offices so that they can know the facts that we want
24 them, because otherwise they would have to talk from
25 hearsay. So it's usually for external constituents

1 reaching into us so that the answers can be consistent.

2 Q And which university personnel would employ
3 these talking points in their conversations with
4 external constituents?

5 A Alumni affairs. Foundation. Parents, parents
6 group. Those would be the three big ones probably.

7 Q Would you or your immediate staff use talking
8 points of this sort in dealing with outside inquiries?

9 A No.

10 Q What is the process for reviewing talking
11 points prepared by communications for use in the role
12 that you just testified about?

13 A I don't know.

14 Q Are you part of any review process for talking
15 points to be used by university officials in that
16 process?

17 A In some cases, yes.

18 Q Were you involved in the review of talking
19 points around the Laffer event issues during this time
20 period?

21 A I don't recall.

22 Q Take a look at the second paragraph in this set
23 of talking points where it says "the university will not
24 tolerate any activity that aims to disrupt or shut down
25 gatherings where ideas are being shared or where

1 academic and personal freedoms are being exercised.
2 Those who continue to display such destructive behavior
3 will face the appropriate consequences up to and
4 including student conduct charges, expulsion and
5 criminal prosecution." Is that an accurate statement of
6 the university's position as of the end of November
7 2019?

8 A Yes.

9 Q What does it mean to you not to tolerate any
10 activity that aims to disrupt or shut down gatherings?

11 A Not to tolerate, where is that?

12 Q The university will not tolerate. I'm focusing
13 on the words will not tolerate.

14 A So depending upon the situation, depending upon
15 the facts of the situation and what occurred and the
16 process from those facts through the appropriate
17 channels, whether it's police or student conduct, we
18 would, we would then take those facts through that
19 process. So not tolerate means that we're not going to
20 ignore it. We're going to assess it and take it through
21 a process to determine what happened and whether there
22 are charges that need to be taken, need to be filed.

23 Q Do you know what the author here meant by
24 "continue to display such destructive behavior" with the
25 emphasis on the word continue, do you understand what he

1 meant by that?

2 A Well, there's two choices. One is to continue
3 during the current event and the other is to continue
4 after the current event. I think that's obvious.

5 MR. MOORE: I think what he's asking is do
6 you understand what the author meant by that?

7 A No.

8 Q You said you agreed with the statement so I
9 want to understand what it is you're agreeing with.
10 What is your, what meaning do you ascribe to that
11 statement "those who continue to display such
12 destructive behavioral will face the appropriate
13 consequences"?

14 MR. MOORE: That's a different question.

15 A That's the assessment of what occurred would
16 include that information.

17 Q Which information?

18 A Whether it continued or not.

19 Q And continued in what sense because you are
20 spelling out two different senses of the word?

21 A Right.

22 Q What sense is the meaningful one for you?

23 A I think it could be both.

24 Q So you would assess whether destructive
25 behavior continued during an incident and also whether

1 it occurred over a period of time that extended beyond
2 the incident?

3 A Correct.

4 Q If you turn to page 336 under point four there
5 is a series of bullet points under the heading "the
6 university made numerous accommodations to make the
7 event on Monday, November 18 happen," the Laffer event.
8 The second bullet point is "demonstrators were provided
9 the opportunity to hold their own speak-out in an
10 adjacent lecture hall." My question to you is in what
11 sense did that constitute an accommodation to make the
12 Laffer event happen?

13 A They were provided the opportunity to hold
14 their own speak-out in an adjacent lecture hall.

15 Q In what way did that constitute an
16 accommodation to make the Laffer event happen?

17 A To give them an opportunity to hold a speak-out
18 event in an adjacent lecture hall. Instead of going to
19 the Laffer event, they would go to this other lecture
20 hall and have a conversation about Laffer's talk.

21 Q So the concept as you understand it was that
22 the demonstrators would not go to the Laffer event and
23 would go to a separate location, therefore not interfere
24 with the Laffer event, have I captured it correctly?

25 A That is the intent.

1 Q In that case why was it relevant or desirable
2 that it be an adjacent lecture hall?

3 A I think that is an appropriate accommodation.

4 Q Why?

5 A Because the students have arrived at a place
6 where they thought that they were going to be able to be
7 involved and then we don't want to send them to the
8 other side of campus. So we try to make it as close as
9 possible.

10 Q Wouldn't it increase the risk that the
11 protesting students would actually be enabled to disrupt
12 the Laffer event if they are placed in an adjacent hall?

13 MR. MOORE: Objection. Are you asking him
14 to speculate?

15 Q No. I'm asking about the fact, your
16 experience, based on your experience is that the case?
17 Or if you don't have experience, just tell me that.

18 MR. MOORE: Experience with this case or
19 with other --

20 MR. HRUSKA: Experience with other prior
21 events.

22 MR. MOORE: Let me finish my objection.
23 I'm just trying to clarify the question because
24 it seems vague to me. Are you asking him to talk
25 about other times this was done or are you asking

1 him to talk about?

2 MR. HRUSKA: I'm asking about his
3 experience.

4 Q What is your experience with respect to the
5 placement of potentially disrupting students with
6 respect to student events on campus?

7 A The one experience I have was in the early
8 teens that Governor Cuomo would come to campus and there
9 would be a group of people who would want to protest
10 about natural gas fracking. And I remember that we
11 would create with the guidance of the governor's office
12 space for those protesters as close as possible to where
13 he was going to speak, but not so close that it would
14 disrupt. And so we kind of took from that that you put
15 them near the event, you give them space, show them what
16 the boundaries are and we thought, this is the first
17 time we had ever done this.

18 Q During the Cuomo event you're testifying about?

19 A The Cuomo event was something that I saw and
20 sort of understood oh, that's how you handle that. But
21 then when we decided to do this event, this is the first
22 time where we were really managing it. The governor's
23 office managed the fracking one. This was the first
24 time we were managing this kind of a controversial,
25 potentially controversial meeting. So we, we were doing

1 it in a way that we thought was most appropriate.

2 Q And your basis and experience for that was your
3 observation of the Cuomo fracking event that you
4 testified about?

5 A It was my observation.

6 Q Did others give you other basis and experience
7 from which to draw on?

8 A No. No. I listened to whoever wanted to do it
9 there and again I was not even in, I was not locally
10 available, but somebody said let's do this and let's do
11 it there and that's what we did.

12 Q Do you recall who it was that suggested that?

13 A No, I don't.

14 Q Then the fourth point in the series of points
15 it says "attendees at the lecture were asked to allow
16 the presentation to go forward and reserve their
17 questions until the end." Do you know whether such a
18 statement was made before the Laffer event?

19 A I wasn't there.

20 Q Have you since learned whether or not it was
21 made?

22 A I have not seen it being made. I have not
23 observed it being made. I wasn't there.

24 Q Are there people who work for you in the
25 university who told you that it was made?

1 A Yes.

2 Q As far as you can recall?

3 A Yes.

4 Q Who told you that?

5 A I don't remember.

6 Q Did whomever it was who told you that this
7 happened tell you who made that statement?

8 A I don't remember.

9 Q On the second to last page of this document,
10 the very top -- turn the page. It's the page marked
11 338. At the very top is the statement "we are
12 continuing our investigation of these events and will
13 bring criminal or student conduct charges against any
14 students or student organizations that have participated
15 in these behaviors." Take a look at the whole paragraph
16 so that you understand the context before I ask the
17 question. So the first question about that is did the
18 university in fact bring criminal charges against any
19 students or student organizations that had participated
20 in those behaviors?

21 A Yes.

22 Q Which ones?

23 A I know there were the two students arrested at
24 the Laffer event and two -- no, I'm saying students.
25 Two people arrested at the Laffer event and two people

1 were arrested, not arrested at, but charges were brought
2 at the tabling event.

3 Q Your testimony earlier was you couldn't recall
4 whether any charges were brought from the tabling event.
5 Are you revising that testimony?

6 A I don't know. It's a good question.

7 Q Well, it's your recollection now at this moment
8 that there were charges brought with respect to the
9 tabling event; is that correct?

10 A I do know that, yes.

11 Q How do you know that?

12 A I was told that.

13 Q By whom?

14 A By my attorney.

15 Q Other than what your attorney has told you
16 which I don't want to hear about.

17 MR. MOORE: Don't talk about --

18 A You asked the question.

19 MR. MOORE: Anything he is asking doesn't
20 have to do with communications with counsel. Did
21 you know that charges were filed related to the
22 tabling event before you met with counsel?

23 A No.

24 Q Okay.

25 A But I do now.

1 Q That's fine, but that's not what we're
2 specifically asking. And I made a remark at the
3 beginning of this deposition and I want to be very
4 clear, I wasn't asking about any communications you had
5 with your lawyers.

6 MR. MOORE: He's asking what you knew or
7 what you know not based on conversations with
8 counsel.

9 Q Was that the complete set of students or
10 student organizations that had participated in those
11 behaviors, the ones that were charged to your
12 understanding following the tabling and Laffer events?

13 A I don't understand the question.

14 Q Was that everybody who had been involved in
15 those behaviors? You've testified --

16 MR. MOORE: Objection to form.

17 Q You've testified that you know of two students
18 or two people, let me revise that, two people who were
19 charged with respect to the Laffer event. Let's
20 concentrate on the Laffer event for a minute. In this
21 statement the university is saying that they will bring
22 criminal or student conduct charges against any students
23 or student organizations that are participating in those
24 behaviors. And I'm asking right now about the criminal
25 part of that statement. And you've testified that there

1 were two people charged and I'm asking you was that
2 everybody who was involved in those behaviors, those two
3 people?

4 MR. MOORE: If you know.

5 A I still don't understand the question.

6 Q You've seen the video of the Laffer event,
7 correct?

8 A Yes.

9 Q You've discussed the Laffer event with your
10 police personnel, correct?

11 A Yes.

12 Q You're aware that the police were recommending
13 that a list of people be charged with respect to that
14 event at least ten, correct?

15 A Yes.

16 Q And so how can it be that the university is
17 taking the position that all of the students and student
18 organizations that have participated in those behaviors
19 would be either criminally charged or have student
20 conduct charges against them when at least with respect
21 to the criminal part of that that's not when happened?

22 MR. MOORE: Objection to form.

23 A Correct.

24 Q What about the student conduct part? You've
25 previously testified that student conduct charges were

1 not brought against any of the participants in this
2 event; isn't that correct?

3 A Correct.

4 Q So this statement is incorrect, the statement
5 in this document on page 338 of document HS-10 is not a
6 correct statement; isn't that right?

7 A Correct.

8 Q You're agreeing with my statement?

9 A I don't know who wrote this document. I'm
10 saying yes, it's incorrect.

11 Q That's what I wanted to clarify. Thank you.
12 Did you take any -- strike that. Were you aware that
13 this incorrect statement was being circulated within the
14 university as a basis for which to make statements to
15 various groups in the public?

16 MR. MOORE: Objection. I think it's
17 ultimately incorrect, but this is.

18 A These are two separate documents. These are
19 not the statement documents.

20 Q That's not part of the talking points?

21 A No. They are separate documents.

22 Q Do you understand what --

23 A Different fonts. Different language. They are
24 different documents.

25 MR. HRUSKA: Well, let's move on. Let's

1 move on. Tab 17 document, 398 through 399 that
2 we'll mark HS-11.

3 MR. MOORE: This was marked as Faughnan's
4 exhibit as long as we're talking about 398
5 through 400.

6 MR. HRUSKA: Yeah.

7 MR. MOORE: This was TF-5 marked at the
8 deposition of Timothy Faughnan.

9 Q In the center of the document on the first
10 page, President Stenger, there is an e-mail from you to
11 John, JoAnn and Tim. It's dated November 27, 2019.

12 A Yes.

13 Q And you write to them and you ask them, and
14 this is in the second paragraph, "I would like the three
15 of you" -- let em start at the beginning of the
16 sentence. "Now that the incidents are in our rear view
17 mirror and things are quiet, I would like the three of
18 you to assess how we handled the two events and
19 incidents and what we would do differently in the future
20 to gain outcomes that could be better." Do you recall
21 assigning Miss Navarro, Mr. Pelletier and Mr. Faughnan
22 to that task?

23 A Yes.

24 Q And what process did they undertake in order to
25 comply with your request?

1 A I don't know.

2 Q Did they come back to you with the assessment
3 that you had requested?

4 A I believe so.

5 Q Did that take written form?

6 A I don't remember.

7 Q Do you remember getting an oral report from
8 them on that topic?

9 A I don't remember.

10 Q Do you remember having discussions with any of
11 the three of them on those topics?

12 A I don't remember.

13 Q So you gave a direction to Mr. Faughnan, Miss
14 Navarro and Mr. Pelletier to assess the handling of
15 these incidents and you have no recollection of whether
16 they responded to that or not --

17 MR. MOORE: Objection. Asked and answered.

18 Q -- is that correct?

19 MR. MOORE: He has answered the question.

20 Move on. He can't answer the same question
21 twice. You've been doing that throughout this
22 deposition. He's answered the question. He can
23 answer again.

24 Q Are you in the habit of giving instructions to
25 your staff and them not responding to you?

1 MR. MOORE: Are you asking him to talk
2 about other incidents?

3 MR. HRUSKA: I'm asking for his practice.

4 A I didn't say that they didn't give a response.
5 I just said I don't remember.

6 Q Is it possible they responded, but it wasn't
7 sufficiently significant for you to recall?

8 MR. MOORE: Objection. Calls for
9 speculation.

10 Q Let's go to the next sentence. It says "for
11 instance, what we could have done if we wanted to not
12 have the YAF video be so disturbing." By YAF did you
13 mean the Young America's Foundation, the plaintiff in
14 this lawsuit?

15 A Yes.

16 Q What did you mean by "the YAF video be so
17 disturbing," what are you referring to if you recall?

18 A "What could we have done if we wanted to not
19 have the YAF video be so disturbing?"

20 Q What's the video and what is disturbing about
21 it? Let's start with that.

22 A That's what I said to them that it was
23 disturbing.

24 Q What video? The video of the Laffer event; is
25 that what you're referring?

1 MR. MOORE: Listen to the question. Does
2 that refer to the tabling event video?

3 Q Tabling event video. And what was disturbing
4 about it?

5 A That it was disturbing.

6 Q Disturbing describes an effect, not the
7 underlying conduct that it displayed.

8 MR. MOORE: Harvey, what he is asking is
9 for your recollection of the video, what you
10 personally found disturbing about it.

11 A I found that it was uncivil.

12 Q And was the incivility on the part of the
13 students disrupting my clients exercising their First
14 Amendment rights; is that what you're referring to?

15 MR. MOORE: Objection to form.

16 A No. It was the entire event.

17 Q Do you ascribed some responsibility to the
18 College Republicans for that disturbing event?

19 A Yes.

20 Q Why?

21 A Because they did not follow the Student
22 Association guidelines for reserving tables.

23 Q And that's why they were responsible for the
24 disturbing nature of the event; is that your testimony?

25 MR. MOORE: Objection. It's a

1 mischaracterization.

2 Q I'm asking if I got it right. Have I got it
3 right or am I mischaracterizing it?

4 A No. Just that they violated a rule and that
5 was part of what disturbed me.

6 Q They violated a Student Association rule, not a
7 university rule, correct?

8 A Correct.

9 MR. MOORE: Objection.

10 Q And it disturbed you they violated a Student
11 Association rule?

12 A Yes.

13 Q That's the significant lesson to draw from that
14 episode?

15 MR. MOORE: Objection. That's not what he
16 said. I think he talked about other things that
17 happened in the video.

18 A Right. That was, that was one of the things
19 that disturbed me is that I want the Student Association
20 to have the ability to be an autonomous, well governed
21 organization that manages its clubs and organizations in
22 a way that promotes the best possible outcomes for our
23 students on campus. And when that organization is
24 stressed in certain ways, for example not following the
25 rules, that's not good. That's unhealthy for the

1 campus. The rest of what disturbed me was the shouting,
2 the language that was used by the students that came to
3 protest it. But yes, it was disturbing.

4 Q You also used this group to report back to you
5 about "what could we have done to insure the Laffer
6 lecture was held," reading from that same paragraph.
7 Did any of those three ever make a report to you on that
8 subject of what the university could have done to insure
9 the Laffer lecture was held?

10 A I don't remember.

11 MR. MOORE: Asked and answered. He said he
12 didn't remember.

13 MR. HRUSKA: I'm turning now to tab 18.
14 This is a document with sequential bates numbers
15 419 through 422 which has been previously entered
16 as Exhibit RY-8.

17 Q It's an e-mail at the top from Ryan Yarosh to
18 you with several copies Tuesday, December 17, 2019 and
19 Mr. Yarosh is sending you a document which is a draft,
20 I'm quoting now, "drafted a piece that will be signed by
21 you and Kristina" which I take it is Kristina Johnson,
22 the university chancellor. Take a look at it. Do you
23 recall this document?

24 A Yes.

25 Q Turning to page 420 it's dated December 10th,

1 2019 and it's addressed to members of the Assembly
2 Minority Conference. If you turn to the second page of
3 that document, that part of the document which is
4 labeled 421, in the center of the document, center
5 paragraph of that page in the fourth paragraph, fourth
6 sentence the one that starts "that's why arrests were
7 made." Do you see where I'm pointing? It's the
8 paragraph that starts "both of these incidents," that's
9 the fourth sentence.

10 MR. MOORE: Read the entire paragraph.

11 Q Take your time and read it if you want to.

12 MR. MOORE: Do you want an opportunity to
13 read the entire document?

14 A No. Okay. I read it.

15 Q The sentence I'm pointing you to, and if you
16 want to refer to other portions of the paragraph or of
17 the document please do, but I want to focus on this
18 sentence. "That's why arrests were made and why student
19 conduct charges are being pursued." So was that a
20 correct statement on December 10, 2019 that student
21 conduct charges are being pursued?

22 MR. MOORE: On December 10th, that's your
23 question?

24 MR. HRUSKA: That's the question.

25 A I interpreted the word pursued as being in

1 process, being evaluated.

2 Q So I repeat my question. Is that a correct
3 statement that student conduct charges are being pursued
4 as of December 10, 2019?

5 A With the definition that pursued means an
6 investigation.

7 Q And with the preface that the answer to the
8 question is yes and then your definition; is that
9 correct?

10 A Yes.

11 Q As of December 10, 2019 what was that process?
12 What was proceeding with respect to potential student
13 conduct charges?

14 MR. MOORE: Objection. I think this has
15 been asked and answered.

16 A That the office of student conduct was still
17 doing an analysis of whether student conduct charges
18 should be stated, should be made. Pursuing is I
19 interpret as investigating. Not actually having made
20 the charge. So the student conduct office was still
21 reviewing, but hadn't made the charges yet as of
22 December 10th.

23 Q And when did that process that you just
24 described end?

25 A I don't remember.

1 Q Did it end in December 2019?

2 A I don't remember.

3 Q Did it end in January 2020?

4 A I don't remember.

5 Q Is it still going on?

6 A I still don't remember.

7 Q It might still be going on, they might still be
8 considering those student conduct charges?

9 MR. MOORE: Objection.

10 Q I want to know whether that's logically
11 possible. Is it possible that the consideration of
12 student conduct charges with respect to the Laffer event
13 in November of 2019 is still ongoing at the University
14 of Binghamton?

15 A I don't know.

16 Q Is it logically possible that it might be?

17 A I don't know.

18 Q Can student conduct charges still be considered
19 after students have graduated?

20 A I don't know.

21 MR. HRUSKA: I want to turn to the next
22 document which is tab 19. And I don't think this
23 has been previously entered so I'll label it
24 HS-11. It's a document bearing sequential bates
25 numbers 244 through 262.

1 (EXHIBIT HS-11 WAS MARKED FOR
2 IDENTIFICATION.)

3 MR. HRUSKA: And it's an e-mail
4 correspondence at the top of which is an e-mail
5 from Tina Chronopoulos that has a Binghamton.edu
6 address to you. The top e-mail is December 24th,
7 2019 and the original e-mail is December 23rd,
8 2019.

9 Q Do you recall this correspondence with Miss
10 Chronopoulos?

11 A Yes.

12 Q Who is Miss Chronopoulos?

13 A She is a professor.

14 Q A professor at Binghamton?

15 A Yes.

16 Q And what do you recall about this
17 correspondence?

18 A She wrote me asking if she could meet with me
19 on a topic that I don't remember and I said yes, we can
20 meet and I gave her some times and dates.

21 Q If you read the e-mail she appears to be
22 requesting a meeting concerning the, some of the events
23 that we've been discussing including the tabling event.
24 Do you recall discussing that topic with her at this
25 time?

1 A I remember meeting with her, but I don't
2 remember the discussion.

3 Q You remember nothing about the substance of the
4 discussion?

5 A No.

6 Q How frequently do you meet with Miss
7 Chronopoulos?

8 A I had never met with her before.

9 Q Did she have any administrative role at the
10 university?

11 A Not that I know of.

12 Q And have you met with her since this meeting as
13 best you can remember?

14 A I have been in the same location with her, but
15 we've never had another one-on-one meeting.

16 Q Have you ever had a meeting even in a group
17 where you had a discussion directly with her that you
18 recall other than this instance?

19 A I was at a lunch with her for an awards
20 ceremony and we had a lunch conversation, but other than
21 that no.

22 Q And would it refresh your recollection to look
23 at this correspondence now that is HS-11?

24 A This is the e-mail that she wrote to me?

25 Q Yes. Does that refresh your recollection at

1 all?

2 A Of the meeting?

3 Q Yes.

4 A No.

5 MR. HRUSKA: Let me move to the next
6 document. I'll mark it HS-12 which is a document
7 at tab 20 bearing the bates numbers 413 through
8 415. It's a letter signed by Kristina Johnson
9 and Harvey Stenger to Members of the Assembly
10 Minority Conference.

11 MR. MOORE: I don't think this one is
12 signed. The next one is signed. 21 I believe is
13 the signed letter. This one isn't signed.

14 MR. HRUSKA: Sometimes it's difficult to
15 tell with the reproduction. And you know what,
16 given the substance of what I want to ask about
17 is identical between the two documents, I'll just
18 dispense with HS-12 and move directly to HS-13.

19 MR. MOORE: You still want to keep it as
20 HS-12?

21 MR. HRUSKA: Strike the earlier reference
22 to HS-12. I'm now labeling as HS-12 a document
23 with bates numbers 416 through 418 which appears
24 at tab 21 in the book which is a letter signed by
25 Kristina Johnson and Harvey Stenger, January 2nd,

1 2020 to Brian Kolb, Minority Leader, New York
2 State Assembly.

3 (EXHIBIT HS-12 WAS MARKED FOR
4 IDENTIFICATION.)

5 MR. MOORE: Do you need a chance to read
6 that, Harvey, so I can take a bathroom break?
7 Off the record.

8 (OFF-THE-RECORD DISCUSSION.)

9 Q Do you recall this document?

10 A Not really.

11 Q Did you sign this document?

12 A My electronic signature was put on it.

13 Q Did you authorize the imposition of your
14 electronic signature on it?

15 A Yes.

16 Q Did you review the document before you signed
17 it?

18 A I read it.

19 Q Did you go through any process to verify the
20 accuracy of the statements in the document before you
21 signed it?

22 A No.

23 Q Do you typically go through such a process
24 before signing documents?

25 A Yes.

1 Q Why did you not do so in this case?

2 A It was written by my boss.

3 Q And therefore you deferred to what your boss
4 wrote, correct?

5 A Correct.

6 Q And you didn't feel the need to check the
7 accuracy of it, correct?

8 A Correct.

9 Q In the document on the second page, which is
10 marked 417, there's a statement which is virtually
11 identical to the one that we were just looking at in
12 another document which says, and it's in a paragraph
13 starting "both of these incidents are deeply
14 disturbing." You get four sentences in it says "that's
15 why arrests were made and why student conduct charges
16 are being pursued." Do you know whether student conduct
17 charges were being pursued on January 2nd, 2020?

18 A I don't recall.

19 Q Do you know whether you had gone through any
20 process to determine whether that was in fact the case
21 as of January 2nd, 2020?

22 A I don't recall.

23 Q So your testimony is you permitted your boss to
24 sign a letter with a statement that you don't recall
25 whether or not had been verified?

1 A I don't recall.

2 Q I want to move ahead. Following the Laffer
3 event you've already testified that there was
4 significant media attention to those, to the incident,
5 correct? Is that a fair characterization of your
6 testimony, there was significant national media
7 attention to the Laffer event?

8 MR. MOORE: Objection. I don't remember
9 him testifying.

10 A Significant national? Those are subjective
11 terms.

12 Q That's why I'm asking whether it's a fair
13 characterization. If you don't think that's right, how
14 would you characterize it? Was there some media
15 attention?

16 A Some.

17 Q Did you participate in any media statements
18 concerning those events?

19 A We made statements.

20 Q Did you personally make statements?

21 A Other than the written statements?

22 Q Other than the written statement, correct.

23 A Not that I recall.

24 Q Do you recall making any statements on a video,
25 media coverage of the Laffer event?

1 A I don't recall.

2 MR. HRUSKA: Let me direct your attention
3 to a document that is at tab 23 which I don't
4 know if it's been previously marked. But if not,
5 I'll mark it HS-13. It's an e-mail from Ryan
6 Yarosh to you on January 24, 2020 and its bates
7 number 431. It's a single page.

8 (EXHIBIT HS-13 WAS MARKED FOR
9 IDENTIFICATION.)

10 Q Do you recognize this document?

11 A No.

12 Q Do you recall what appears to be some form of
13 interview that you participated in in which you made
14 these statements?

15 A No.

16 Q Having read these statements do you think they
17 accurately reflect your thoughts at the time in January
18 of 2020?

19 MR. MOORE: Take your time and read it
20 before answering any questions.

21 A "I think we had protected students that were on
22 both sides at that point." I agree with that. "We have
23 policies on campus that if you expect to have a
24 counter-protest because of the content of something that
25 is happening, let us know so that we can be prepared."

1 I agree with that. "We were prepared for Dr. Laffer's
2 visit. We had police in the room. We had police
3 outside, undercover, plainclothes, as well as in
4 uniform. As soon as that student stood up on the chair
5 with the bullhorn, police took action. Had enough
6 police there to make as many arrests as necessary. He
7 didn't give us a chance to do that." Yes, that is
8 accurate.

9 Q I want to focus your attention on the second to
10 last paragraph where you're quoted as saying "the
11 university had enough police there to make as many
12 arrests as necessary." What information do you have
13 that supports that statement?

14 A It was an assumption that I made.

15 Q What is the basis for the assumption?

16 A That I trust our police department to make good
17 decisions.

18 Q So you don't actually know whether there were
19 enough police there to make as many arrests as
20 necessary, you in fact just assume that that was the
21 case, correct?

22 A I had every expectation that was the case.

23 Q But you don't have any actual information that
24 that was the case? In other words nobody told you that
25 that was the case, correct?

1 MR. MOORE: Objection. Form of the
2 question. I think he's answered it. Go ahead.
3 Is the question did someone tell him that?

4 MR. HRUSKA: Yeah.

5 MR. MOORE: Did someone tell you that
6 information?

7 A I don't remember.

8 Q Do you recall meeting with Congressman Tom Reed
9 in January 2020 concerning the tabling and Laffer
10 events?

11 A Yes.

12 Q And what did you do to prepare for that meeting
13 with Congressman Reed?

14 A I asked some people, I don't know who, who
15 should be involved in the meeting.

16 Q And who was, who did you decide should be
17 involved in the meeting?

18 A We decided that Brian Rose should join me and
19 that Darcy Fauci should participate in the event that he
20 was having with the students outside.

21 Q And did you do anything in preparation for that
22 meeting to review the events and refresh your
23 recollection of what had happened two months before?

24 A Nothing specific, no.

25 Q Do you feel the events of November 2019 were

1 fresh in your mind in January 2020?

2 A I don't remember.

3 MR. HRUSKA: I would like to play for you
4 parts of an audiotape that were taken of that
5 meeting which are referenced in our complaint. I
6 would be happy to play the entire audiotape for
7 you if that would help refresh your recollection,
8 but there are only specific segments of it that I
9 want to ask you about. So I'll allow you right
10 now time to listen to the entire tape if that is
11 helpful, but from my perspective that's not
12 necessary since I want to focus on specific
13 passages. So tell me how you would like to
14 proceed.

15 MR. MOORE: I believe, and I'll leave it up
16 to Harvey, but I believe Harvey has reviewed the
17 transcript. And I'll state for the record that I
18 assume you're going to the transcript.

19 MR. HRUSKA: I'll use the transcript with
20 the acknowledgment that the transcript is only an
21 interpretive aid and it's the actual audiotape
22 which I reference in our complaint is what I'd
23 like to refer you to. We're providing the
24 transcript as a convenience because it's helpful
25 to be able to follow along.

1 MR. MOORE: Joe did this the other day with
2 Brian Rose. We have no objection to you playing
3 portions of it. If the witness needs an
4 opportunity to hear more or to consult the
5 transcript, I would ask that he be given the
6 opportunity to do that. Is that okay with you?
7 You tell me or we can listen to the entire
8 recording now. Do you want to take a break and
9 talk? Why don't we do that. Let me find out
10 what the witness wants to do.

11 MR. HRUSKA: Absolutely. Off the record.

12 (RECESS TAKEN.)

13 MR. MOORE: The understanding is that we
14 have no objection to you playing portions of the
15 recording for purposes of refreshing the
16 witness's recollection. We would only ask that
17 you point him to wherever the recording reflects
18 in the transcript so we can also look at that.

19 MR. HRUSKA: That's exactly what I plan to
20 do.

21 MR. MOORE: And I'll state for the record
22 that the transcript was marked as BR-8 I believe
23 at Brian Rose's deposition so we should give it
24 the same designation.

25 (MR. SAITTA LEAVES THE VIDEOCONFERENCE.)

1 MR. HRUSKA: So I'm going to play for you
2 an audio file that is referenced in our complaint
3 at footnote 29 from YouTube. And the first
4 section that I'm going to play for you is
5 beginning at 8:53 in the file which corresponds
6 to page 12 of the transcript.

7 MR. MOORE: Minute eight, seconds 53?

8 MR. HRUSKA: Correct. So if you go down to
9 line 17 of page 12 of the transcript that's where
10 I'm planning to start. And I think I said before
11 the transcript is not perfect and it's really the
12 audio file which will govern here, but we're
13 providing the transcript as an interpretive aid.
14 So begin playing at 8:53.

15 (AUDIO FILE PLAYED.)

16 MR. HRUSKA: All right. Stopping the audio
17 file at 10 minutes, 57 seconds which corresponds
18 to page 15, line one of the transcript.

19 MR. MOORE: BR-8.

20 MR. HRUSKA: BR-8.

21 Q I know there were several voices that figured
22 in that audio recording, but is the main voice that is
23 speaking yours, President Stenger?

24 A Yes.

25 Q So on that tape in the conversation with

1 Congressman Reed you make the statement that "we turned
2 to Mr. Laffer and said how long will you wait for us to
3 clear the room." What's your source for that?

4 A John Pelletier.

5 Q Mr. Pelletier told you that in those words?

6 A Yes.

7 Q When did he tell you that?

8 A I don't remember. After the event and before
9 this meeting.

10 Q Was that an oral conversation?

11 A Yes.

12 Q Did he also give you that information in
13 writing?

14 A No.

15 Q So solely oral?

16 A Right.

17 Q You then say, and this is at the bottom of page
18 12, top of page 13 in the transcript. "He said to our
19 police officer ten minutes. He then left." In that
20 statement you are referring to the words that Mr.
21 Pelletier ascribed to Dr. Laffer; is that correct?

22 A No. I think I misspoke there. Where is that
23 again?

24 Q Bottom of page 12. I'm just continuing with
25 the next sentence, bottom of page 12, top of page 13 in

1 the transcript.

2 A "He said to our police officer ten minutes." I
3 misspoke there.

4 Q Had you spoken correctly, what would you have
5 meant?

6 A "He turned to Mr. Laffer and said how long will
7 you wait for us to clear the room," and I think what I
8 had heard from John Pelletier is not that. I think what
9 I heard from Mr. Pelletier was we had asked him could he
10 wait ten minutes and he said yes.

11 Q So just to be precise what you mean is that Mr.
12 Pelletier had asked Mr. Laffer to wait 15 minutes?

13 A Right, right. And that he said yes to him.

14 Q And Dr. Laffer responded orally to Mr.
15 Pelletier yes?

16 A Correct.

17 Q And that's what Mr. Pelletier told you?

18 A That's what I recall Mr. Pelletier telling me,
19 yes.

20 Q You also make the statement, and this is at the
21 bottom of that carryover paragraph top of page 13, and
22 I'm able to fix the transcript somewhat because I just
23 listened to the recording, "but we had enough police
24 there to make as many arrests as necessary in order to
25 have that talk go off." Do you recall making that

1 statement?

2 A Yes.

3 Q And what was your source for that statement?

4 A My belief that the police had organized enough
5 police representatives to make this happen.

6 Q Is that also based on an oral statement from
7 Mr. Pelletier?

8 A No.

9 Q Was there some other source?

10 A No.

11 Q This is just your assumption again based on?

12 A My belief that he was doing his job properly.

13 Q Did you ever ask Mr. Pelletier that question
14 whether there were enough police there to make as many
15 arrests as necessary?

16 A I don't remember.

17 Q Did you ask after your meeting with Congressman
18 Reed whether that was in fact an accurate statement?

19 MR. MOORE: Objection. I think that was
20 asked and answered.

21 A I think the, I think the how long it would take
22 was unknown.

23 Q That's not the question I'm asking. The
24 sufficiency of the police presence is the question.
25 Enough police there to make as many arrests as necessary

1 in order to have that talk go off.

2 MR. MOORE: What's the question?

3 Q Whether he had asked Mr. Pelletier after the
4 meeting with Congressman Reed whether that statement was
5 accurate?

6 MR. MOORE: Did you make that inquiry to
7 Pelletier?

8 A No.

9 Q That's the answer. And carrying on on page 13
10 of the transcript you say "that morning on the phone I
11 spoke with everybody that was going to be there and I
12 said we're making arrests until we get that room
13 cleared." Do you recall making that statement to
14 Congressman Reed?

15 A Yes.

16 Q Do you recall making a statement in substance
17 to that effect to a group of university officials before
18 the Laffer event?

19 A Similar.

20 Q And was the substance of the statement that you
21 had made at that time before the Laffer event that the
22 university police should make arrests until the room was
23 cleared?

24 A Yes.

25 Q And did the university police say that they

1 would execute on that direction?

2 A I don't remember.

3 Q You next state "he didn't give us a chance to
4 do that unfortunately." Are you referring to Dr.
5 Laffer?

6 A Yes.

7 Q And is your point that Dr. Laffer did not give
8 the police enough chance to carry out sufficient arrests
9 to clear the room so as to allow the talk to go off?

10 A Yes.

11 Q Okay. At the top of page 14 in the first, at
12 lines two and three you state "the room was filled with
13 policeman. They weren't in uniform." Is it correct
14 that university police or at least some university
15 police I should say were present at the event and not in
16 uniform?

17 A I believe that is accurate.

18 Q And is your source on that again Mr. Pelletier?

19 A No.

20 Q What's your source?

21 A That I assumed that Chief Pelletier was
22 performing his duty appropriately.

23 MR. HRUSKA: All right. I'm going to play
24 another section. I'm going to skip ahead to page
25 40, line 21 which corresponds to 30 minutes, 25

1 second on the tape.

2 (AUDIO FILE PLAYED.)

3 A Can you stop that for a second? I don't know
4 where we are. I'm at the wrong page.

5 Q Page 40, line 21.

6 A But that is Brian Rose speaking.

7 Q Okay.

8 MR. MOORE: I think that was established at
9 the prior deposition.

10 MR. HRUSKA: The transcript may be
11 inaccurate.

12 MR. MOORE: That was clarified at --

13 MR. HRUSKA: That's fine. I still would
14 like you to listen.

15 A I just wanted to know where we were.

16 MR. HRUSKA: That's fine.

17 MR. MOORE: So we're right about here.

18 Q You want me to start from the beginning of the
19 segment?

20 A Yeah.

21 MR. MOORE: And where are we on the
22 recording?

23 MR. HRUSKA: 30 minutes, 25 seconds.

24 (AUDIO FILE PLAYED.)

25 MR. HRUSKA: Let me stop there at 31

1 minutes, two seconds.

2 Q So you at that point heard a voice which you've
3 identified as Mr. Rose make a statement. Do you recall
4 him making that statement during the meeting?

5 A Yes.

6 Q And in that statement he says "we can't
7 tolerate action by the Student Association which
8 ultimately receives their dollars through the state
9 process." And before that he says "we have a
10 responsibility to insure that, you know,
11 constitutionally protected rights of all of our students
12 are in fact protected." Mr. Rose is stating that the
13 university has control over the Student Association,
14 correct?

15 MR. MOORE: Objection. That's not what it
16 says. Is there a question? Is that the
17 question?

18 Q That's the question. Is that correct?

19 A Control.

20 Q Well, he said "he can't tolerate action by the
21 Student Association which ultimately receives their
22 dollars through the state process."

23 A Where does it say that?

24 Q On lines five through eight on page 41 in the
25 transcript.

1 MR. MOORE: Are you asking him to interpret
2 someone else's comments?

3 A I can't comment on his statement.

4 Q Do you recall, you said you recalled hearing
5 him make that statement at the time, correct?

6 A Yes.

7 Q Did you disagree with the statement?

8 A Did I then?

9 Q Yeah.

10 A I didn't say anything.

11 Q Did you hold your tongue because for whatever
12 reason, but you nevertheless disagreed with it?

13 A Well, "we can't tolerate which ultimately
14 receives their dollars through the state process," he
15 hasn't said anything. He said "we can't tolerate
16 action" and then he says "which ultimately receives
17 their dollars through," but he hasn't said what he would
18 do with that information so I don't think he's made a
19 statement of action at all.

20 Q And do you think that the university has the
21 ability to withhold funding from the Student Association
22 if the Student Association is engaged in conduct that
23 the university cannot tolerate?

24 A I don't know. It's never been tested.

25 MR. HRUSKA: Let me keep playing here. I'm

1 going to start again at 31 minutes, two seconds.

2 (AUDIO FILE PLAYED.)

3 MR. HRUSKA: Stopping at 31 minutes, 41
4 seconds.

5 Q So here Mr. Rose is talking about intervention
6 by the university in the activity of the Student
7 Association, correct?

8 A Correct.

9 MR. MOORE: The statement speaks for
10 itself.

11 A Correct.

12 MR. MOORE: I mean he said what he said.

13 Q And did you agree with that statement at the
14 time it was made?

15 A I didn't have any basis to agree or disagree
16 with it because I was not there during this case that he
17 is talking about.

18 Q What about the principle that he invokes "that
19 we would intervene precisely the same way if the scale
20 or nature of their response was unfair or, you know,
21 ultimately violated your rights as students to organize
22 consistent with all the regular rules and regulations of
23 both the university and the SA."

24 MR. MOORE: Objection. What's the
25 question?

1 A I can't agree or disagree because there is no
2 statement in here to agree or disagree with.

3 Q Well, you have a congressman who is asking
4 questions about the activity of the state university.

5 (MR. SAITTA RETURNS TO VIDEOCONFERENCE.)

6 Q And someone who reports directly to you is
7 responding to him telling him that the university has
8 the ability to affect the actions of the Student
9 Association. Isn't that what's going on here?

10 A He's saying what he said is that "we can't
11 tolerate action by Student Association which ultimately
12 receives their dollars through the state process." That
13 doesn't say what he would do.

14 Q Well, he talks about a historical example where
15 he says the university did intervene.

16 A What did they do?

17 Q And then he promises the congressman that they
18 would intervene if necessary.

19 MR. MOORE: Objection to counsel's
20 characterization of what Rose meant. Rose has
21 testified on this. So if you have a question for
22 President Stenger.

23 Q Well, what did you understand by this exchange?
24 Did you understand what Mr. Rose was talking about?

25 A Yes.

1 Q What did you understand by it?

2 A That we tried to keep a good relationship
3 between us and the Student Association. That we would
4 work with them and advise them to take the appropriate
5 actions. What Brian is saying here is that we would, we
6 would do something to them more severe than just giving
7 them advice and letting them reject our advice. And I
8 am not sure that he is correct. If he was to be asked,
9 he is not being asked, whether or not there are any
10 actions that the university could take against the
11 Student Association with regards to their funding, I do
12 not know whether that is true or not. Whether that is
13 an allowable action by us in the State University of New
14 York system.

15 Q It sounds as though you are somewhat skeptical
16 that it is allowable; is that correct?

17 A I would say that doing it would probably be a
18 bad idea to even try to do it because again we're trying
19 to create a relationship between the students,
20 administration, faculty that is collaborative, not in
21 controversy. To do this would have said you've lost all
22 chance to work closely with your Student Association.
23 But he is not saying that. Nowhere in here does he say
24 I'm going to take their funding away. He doesn't say
25 that.

1 Q Well, he seems to be saying something that he
2 ascribed significance to because he is raising it with a
3 congressman who is asking some very pointed questions.
4 What he seems to be saying is that the university has
5 the opportunity to intervene in some meaningful way in
6 the operation of the Student Association.

7 MR. MOORE: Objection. That is not a
8 question. It's your interpretation of this
9 document. It's not an appropriate vehicle for a
10 deposition. If you have a question, ask the
11 witness a question.

12 Q My question is did you address this issue after
13 the meeting with Mr. Rose to properly understand what it
14 was he was saying on this point?

15 A I don't remember. The word intervene could
16 mean a lot of things. It could mean let's sit down and
17 have a really good conversation with them, Harvey.
18 Let's see if we can convince them. That's an
19 intervention.

20 Q And that might be a good reason to raise it in
21 a conversation with Mr. Rose, but your testimony is you
22 don't recall having such a conversation, correct?

23 MR. MOORE: Objection to form.

24 A No, I didn't raise it here.

25 MR. HRUSKA: Let me take a minute and go

1 off the record and see whether I have any further
2 questions.

3 (OFF-THE-RECORD DISCUSSION.)

4 EXAMINATION BY

5 MR. SAITTA:

6 Q Dr. Stenger, I'm Tom Saitta. I'm representing
7 the Student Association in this matter. I'll ask you
8 just to abide by the same rules that were discussed
9 before about answering and I'll try not to repeat what's
10 already been asked of you.

11 MR. SAITTA: Can we take a five minute
12 break? I'm getting a call I absolutely need to
13 take.

14 A No.

15 MR. MOORE: Tom, we're here for the
16 deposition now. We all have a long way to drive.

17 Q In one of the, I think it was tab two of the
18 exhibits on page 1234 you reference the Student
19 Association issues or concerns. What Student
20 Association issues did that involve?

21 MR. MOORE: You're talking about Exhibit
22 HS-2 at page 1234 three quarters of the way down
23 the page?

24 MR. SAITTA: Yeah.

25 Q "I'd like to charge Brian and Greg with the

1 task of determining the next steps. This is a
2 communications, student conduct and Student Association
3 issue." What does Student Association issue mean in
4 that context as you understand it?

5 MR. MOORE: I'll object simply to the
6 extent that Mr. Hruska had already asked that
7 question and an answer was given, but go ahead.
8 I mean, Tom, that was asked and answered, but if
9 you have a follow up.

10 Q All right. Let me ask it to you this way. Did
11 the Student Association issue involve the Student
12 Association's decision to charge the College Republicans
13 with a tabling sanction?

14 A That was part of it.

15 Q And did it also involve the Student
16 Association's decision not to charge the College
17 Progressives for inciting the Laffer incident?

18 A Yes, I believe so.

19 MR. HAYDEN: Can we note for the record
20 that he is referring to an e-mail that was sent
21 before the Laffer event?

22 MR. MOORE: Yeah, Tom, this is a November
23 16th e-mail. This has nothing to do with the
24 Laffer event. The Laffer event hasn't happened.

25 MR. SAIITTA: Okay. Got you.

1 Q You also talked about the outdoor space
2 reservation policy of the university in terms of
3 reserving space for tabling. That's a function for the
4 university, not the Student Association, correct? Let
5 me ask it this way.

6 A I don't know. I don't know, Tom.

7 Q Let me ask it this way. If you don't know,
8 that's fine. When a student organization wants to
9 reserve a space to table, that gets approved by the
10 university as opposed to the Student Association or
11 don't you know?

12 A I don't know.

13 Q All right. And in terms of the letter that has
14 been discussed as the smoking gun in Mr. Rose's
15 communication before, do you have any personal knowledge
16 as to whether or not that letter was either generated or
17 approved or disseminated by the College Progressives?

18 A I do not know the answer to that.

19 Q Okay. So you don't have any knowledge if I
20 understand what you're saying as to that, as to whether
21 the Progressives actually were involved in generating or
22 disseminating that letter?

23 MR. MOORE: Asked and answered.

24 A Don't know.

25 Q You don't know if you have any knowledge or you

1 don't have any knowledge I guess is what I'm getting at?

2 A I don't have any knowledge.

3 Q Okay. Thanks. That's what I needed to know.

4 Has anybody ever provided you, other than the letter
5 that has been referred to as the smoking gun has anybody
6 ever provided you any other evidence that the College
7 Progressives were involved in inciting the protests that
8 occurred at the Laffer speech?

9 A I don't, I don't know. I don't recall.

10 Q So you don't recall seeing any other evidence?

11 A No.

12 Q And with respect to the sanctions that the SA,
13 Student Association can impose on a student
14 organization, to do that is it your understanding that
15 they have to have proof that more than just a student
16 was involved, that it has to be the organization itself
17 that is either approving or sanctioning the conduct?

18 A I don't know their rules that well.

19 Q Would you at least, would you agree that there
20 is a difference between one student who is a College
21 Progressive causing a problem as opposed the College
22 Progressives as a group creating a problem?

23 A I think that would be up to the Student
24 Association. I don't know what the rules are.

25 Q Okay. Did you ever have any discussions with

1 the Student Association officers or employees regarding
2 sanctioning the College Progressives over the Laffer
3 event or the tabling event?

4 A I never had a conversation with them about it.

5 Q And did you ever have any conversations with
6 any SA officers or employees regarding lifting the
7 sanction against the College Republicans for the tabling
8 violation?

9 A Again I was not part of the conversation, but I
10 was in the room when the conversation occurred between
11 Brian Rose and the SA leadership.

12 Q And when Brian Rose raised it, did he direct
13 the Student Association to lift the sanction against the
14 College Republicans?

15 A I don't recall.

16 Q And do you recall whether or not he directed
17 the Student Association to charge the College
18 Progressives?

19 A I don't recall.

20 Q Did you have any opinion whether or not the
21 Student Association should have charged the College
22 Republicans?

23 A No. I don't have an opinion on that.

24 Q And in the student conduct charges that you
25 were referring to, those are through the university as

1 opposed to the Student Association; is that correct?

2 A The term student conduct implies the student
3 conduct process of the university.

4 Q Okay. And that is different than the Student
5 Association bringing a disciplinary action against a
6 group, correct?

7 A Yes.

8 MR. SAITTA: All right. Those are all the
9 questions I have for you. Thank you.

10 MR. HRUSKA: I just have one more question.

11 REEXAMINATION BY

12 MR. HRUSKA:

13 Q The question is whether this refreshes your
14 recollection. Two days ago Mr. Rose testified that in
15 the context of the consideration of arrests following
16 the Laffer event, of students following the Laffer event
17 that Darcy Fauci told him that you had expressed a
18 desire to avoid arrests if possible. Does that refresh
19 your recollection?

20 A Yes.

21 Q What do you remember about it?

22 A It sounds accurate.

23 Q So you did in fact tell Ms. Fauci to tell
24 others that you wanted to avoid arrests of students
25 following the Laffer event?

1 A I don't remember.

2 Q But if that statement sounds accurate, what do
3 you base your recollection on if you don't remember?
4 I'm just trying to understand what is the full set of
5 your recollection.

6 A It's partial recollection.

7 Q And is it anything other than what I just said
8 in that you stated sounded accurate, is there anything
9 more to the memory than that?

10 A Well, again I'm saying it sounds like me, but I
11 don't remember saying it.

12 MR. HRUSKA: Okay. That's it.

13 THE REPORTER: I just need to get orders on
14 the record, orders for the transcript. Are you
15 splitting, Mr. Saitta?

16 MR. SAITTA: I'm splitting, yes. And I'll
17 just need a PDF.

18 THE REPORTER: Are you going to want it
19 expedited?

20 MR. SAITTA: No, that's okay.

21 MR. MOORE: We'll get our copy from
22 plaintiff's counsel for review. He's going to
23 send it to us for the witness to review and sign
24 and we can take that as a PDF.

25 MR. HRUSKA: PDF.

1 MR. MOORE: The original to us and we'll
2 have that signed and sent.

3 MR. HRUSKA: As opposed to hard copy which
4 would be awkward. So PDF is fine.

5 THE REPORTER: And you want it expedited
6 for 3/1?

7 MR. HRUSKA: Yes.

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CERTIFICATE OF REPORTER

I, Delores Hauber, hereby certify:

That the foregoing proceedings were taken before me
at the time and place therein set forth;

That the proceedings were taken down stenographically
by me and thereafter formatted into a full, true, and
correct transcript of same;

I further certify that I am neither counsel for nor
related to any parties to said action, nor in any way
interested in the outcome thereof,

DATED this 28th day of February, 2023,



DELORES HAUBER

Shorthand Reporter

1 John Moore, Esq.

2 john.moore@ag.ny.gov

3 February 28, 2023

4 RE: Young America'S Foundation v. Stenger Et Al.

5 2/24/2023, Harvey Stenger (#5777614)

6 The above-referenced transcript is available for
7 review.

8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 cs-ny@veritext.com.

16
17 Return completed errata within 30 days from
18 receipt of testimony.

19 If the witness fails to do so within the time
20 allotted, the transcript may be used as if signed.

21
22 Yours,

23 Veritext Legal Solutions
24
25

Young America'S Foundation v. Stenger Et Al.

Harvey Stenger (#5777614)

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Harvey Stenger Date

1 Young America'S Foundation v. Stenger Et Al.

2 Harvey Stenger (#5777614)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Harvey Stenger, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10
11 _____
12 Harvey Stenger

_____ Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS
15 _____ DAY OF _____, 20____.

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19 NOTARY PUBLIC
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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